CHRISTOPHORI CRUSII JC.

TRACTATUS

DE INDICIIS DELICTORUM EX JURE PUBLICO ET PRIVATO, &c.

deprompti, & eleganti methodo diſpoſiti,

PARS QUARTA.

Continens

PROCESSUM INDICIORUM CRIMINALEM.

M. DC. XXXVII.

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CAPUT

CAPUT PRIMUM
DE PROCESSU ET ORDINE SERvando in cauſis iudiciorum.

SUMMARIA

1. [illegible]
2. [illegible]
3. [illegible]
4. [illegible]
5. [illegible]
6. [illegible]
7. [illegible]
8. Ordo [illegible]
9. Ordinem ſervare [illegible]
10. Quanta [illegible] Candelam [illegible] ordinaſſe [illegible]
11. Ordo [illegible] Imp. [illegible]
12. [illegible] non corrumpit [illegible]
13. [illegible] neceſſaria eſt oratio [illegible]
14. De [illegible] quibus [illegible] præſtet oratio [illegible]
15. A [illegible] qui omittere ſereno [illegible]

De proceſſu iudiciorum nonnihil [illegible] dicturi, precamur [illegible] & individuam Trinitatem, Patrem immenſæ bonitatis, Filium æternæ gloriæ & Spiritum ſanctum inſignis gratiæ, ut nobis adſit, mentem calamumque regat, & quæcunque [illegible], ſcribamus, ea unice ad [illegible] Maieſtatis laudem, & [illegible] Amen.

[illegible] quàm civilium cauſarum, qui [illegible] præſtiterunt in hac provincia [illegible] vel emendare ſtudeat, laterem lavare [illegible] videntur. Atque [illegible] iudiciorum [illegible] hujus [illegible] expedivit, [illegible] forenſibus haud ingratam, ſi quæ [illegible] in præſentiarum, ea [illegible] imperfectum relinquam [illegible] laboris [illegible], [illegible] ſat ſuperque iudiciorum materiæ quidem inſtructam, at non [illegible] ſufficien-

ſufficienter, quomodo uſurpes lecta perlecta, quomodo procedat [illegible]
diſpenſet juſtitiarius in materia hac indiciorum. Attigerunt fateor non
pauci ex noſtris, hæc quæ ſequentur, ſed primis ut dicimus labris, [illegible]
ex Nilo aquam haurientes, inceperant cantionem, at minimè [illegible],
talemq; reliquerunt ideam, quæ nondum viderit lucem, ex[illegible],
at non diſſimilem acervo paleæ immenſo, unde grana tri[illegible]
colligenda, ubi laboris forent operis & artis, eâ, qua par [illegible]
cunq; neceſſe erit deprimere, ea quæ ſtylus & proceſſus, in materia hac pro-
funda longè lateq; dumoſa huc jure videtur exigere.

Ut igitur hac in parte, quæ poſtrema erat inſtituti ratio, gratificaremur
1 communi utilitati, de proceſſu † indiciorum, tractare & dicere [illegible]
haud immeritò etiam nobis viſum fuit.

2 Eſt autem Proceſſus † hic nihil aliud, quàm ordo juris in genere de-
monſtrans, quo tenore, quo pacto & modo cauſa in foro [illegible] perſe-
quenda & expedienda ſit. Sic in præſenti Proceſſu [illegible] docet, quan-
do quomodocunque ea, quæ [illegible] præſupponi & [illegible] propo-
nenda ordine perficienda ratione & modo [illegible]. [illegible] perficien-
3 da, vel neſcire ordinem faciendi, † ſcientia [illegible] &
manca, *Bald. in præf. [illegible] & in conſil. [illegible]*
prohib. hinc præpoſtera petitio exploditur ab Imp. *in l. [illegible], Cod. de he-*
4 *red. act.* præpoſtera † actionis exceptio [illegible]
quæ ſalvari poſſit, *juxta l. ſi cum pater, ubi Bart. [illegible]*
[illegible] [illegible]
[illegible] *[illegible], ext. de Except. [illegible]*
[illegible] op. in loc. ab ordine [illegible] [illegible] Urbanus Papa [illegible],
in c. cum dilecta, ext. de reſcript. Cum permiſiſſet [illegible], ut tres
nominarent ex ordine ſuo, quem in numerum Cardinalium [illegible]
[illegible] nominaſſet [illegible]
5 [illegible] ne videlicet poſſet ignoſci, quis [illegible], Papa † [illegible]
facere [illegible] tres [illegible], & neminem
ex illis [illegible] Cardinalem, [illegible] Cardina-
6 lium Magnus Cæſar † [illegible] libellum [illegible] & ſine
ordine [illegible] rejicit, quam [illegible] con-
[illegible] *[illegible] Sacerdos in verbo [illegible]*
[illegible] cap 49, a me reviſo aucto & [illegible]. [illegible]
[illegible] judici [illegible] indiciorum [illegible]
7 [illegible] ordina[illegible]
n[illegible]. Cum enim decidendæ [illegible], [illegible]
nis [illegible] ſupplicium [illegible]
[illegible]. Quo ſententiam latam [illegible],

una

una inſigni [illegible] impreſſione elementorum, (A.) quod ſymbolum [illegible] abſolutionis, vel [illegible] vel pœna. Altera duplicis ſignaturæ (N. L.) [illegible] non liquet indicans. Tertia (C.) id eſt, condemnationis, cujus vice [illegible] uſurpant [illegible] certiſſimum [illegible] & mortis argumentum, &c.

[illegible] ordinem proceſſumq; in [illegible] ſententiis criminalibus, tam quæſtionum quam definitivarum reſpectu, lapillis in urnam conjectis, qui mos & Græcis & Romanis fuit uſitatus, *[illegible] Pol[illegible] Rom. lib. 5. p. 659.* quæ docet *Ovid. 15. Metamorph.*

Mos erat antiquis niveis atrisq; lapillis
His damnare reos, illis abſolvere culpa
Tunc quoq; ſic lata eſt ſententia triſtis [illegible]
Calculus in mitem demittitur ater in urnam.
Quæ ſimul effudit numerandos verſa lapillos
Omnibus e nigro color eſt mutatus in album.

Hujus ritus meminit *l. 14. Cod. [illegible] judic. l. [illegible] factor. C. [illegible] appell[illegible]* [illegible] mos ordoq; † punctorum ut quot Candidati in honoribus decernendis, tot 8
tabellæ in quæſtionibus, itidem, quot ſententiæ genera, abſolutionis vel condemnationis, quod maxime obſervatum M. Scauro ad populum repetundarum delato. Vid. annotationes *Philip. Br[illegible]d. ad Bo[illegible] d. loc.* ubi [illegible] ſpecialior indicit ad hanc rem, quo lectorem remitto, nec locos [illegible] attigiſſe [illegible] [illegible] aliis amantiores.

Cæterum [illegible] Politico Eccleſiaſtico & Oeconomico, ſiquidem ordo neceſſarius [illegible] certus [illegible] agendi modus, qui [illegible] in hac præ[illegible] & ſpinoſa judiciorum [illegible]. Prudens in aula, in provincia, in ditione, in fiſco, ordinem † obſervet. *Caſ[illegible] Sphær. civit. [illegible] cap. 4.* Sa[illegible] ordo & proceſſus rerum 9
[illegible] *Scalig. de ſubtil. exerc.* [illegible] quia librorum eſt de [illegible] *Spannoch. de nov. op[illegible]* [illegible] 15. quia ordo [illegible] bene diſponit, *[illegible] præſcript. in pr.* Prudens in R[illegible] [illegible] verſatur ne confuſio ſuboriatur remoto ordine, *W[illegible] ab [illegible] 1. cap. 1 n.* [illegible] ordines quoq; enati Eccleſiaſticorum, de quibus [illegible] *de [illegible] mun[illegible] in pr[illegible]* ab ipſo Moyſe inſtituti, *[illegible] 4.* [illegible] 17, hinc [illegible] in Eccleſia requirit *Ap[illegible] 1 C[illegible] 14. ad Co-* [illegible] Ordinis quoq; [illegible] Romana neceſſitatem deſcribit *Concilium [illegible] cap. 1[illegible]* [illegible] Hiſpani & Galli paulo 10
preſſius [illegible] teſtimonia re[illegible] eſſe clericis, paſſim [illegible] fore ut Papa redigeretur [illegible] eſſent Prælaturæ in ſtatus ordinesq; Oec[illegible] & [illegible] *[illegible] in hiſt. Conc. Tridenti. lib. 5. & 6.* Porro Papæ ordinem [illegible] ſionis [illegible] Concilio illo quoad Hiſpaniæ & Galliæ legatos, per[illegible] in [illegible]

 ſcanda-

ſcandala. Cardinalis Lotharingius minitatus eſt, ut niſi Papa ſcandala hæc nova de ſeſſionibus removeret, velle ſe conſcendere ſuggeſtum, cruce Chriſti in manus arrepturum, & clamare alta voce Miſericordia. [illegible] prædicaturum omni populo, quod Romana Eccleſia eſſet mater ſcandalorum, quæ merito ſit vitanda, *Idem lib.8 pag.mihi* 848. inde ordine turbato enata inconvenientia ſimultates, cædes, nihil quoq; de ordine † ſubſcriptionis ſcri-
12 bam, qui non nocet nec præjudicat ſi ſit præpoſteratus, *Warremb. de fœd. d. loc. num.* 16[illegible]. vel mutilatus, nec a ſingulis de ordine ſubſcriptus, *Petr. de d. loc. c. fin.* ubi refert Concilium Tridentinum non ſubſcriptum a Gallis, ab Hiſpanis cum proteſtatione, quà mente a Græcis ſubſignatum docuit eventus, qui poſthac ſub utraque paſſim communicarunt, & ut adhuc Papæ bullas flocci
13 pendunt. Porrò in re militari nihil excellentius conſultiusve eſt ordine. † ut Romani inter delectum, arma aciem & diſciplinam ordinem numerare ſint ſoliti, *Lipſ. de re mil Rom. dial.* 2[illegible] [illegible] Cæſar de Arioviſto Germanorum Rege ait apud *Dion. lib.* 38. Quis neſcit nos ratione & ordine uti, illos, Germa-
14 nos ſcilicet incompoſitos ſed omnia ruere, &c. Sic in ſtatu † Oeconomico ordo eſt neceſſarius, ne per confuſionem Oeconomus ad extremam dilabatur inopiam, qua de re Columell.

Ordine pervenies quo non licet ire labore
Ordinis hæc virtus erit, & Venus aut ego fallor.
Ut jam nunc dicat, jam nunc debentia dici
Pleraq; differat, & præſens in tempus omittat
Hoc amet, hoc ſpernat, &c.

15 Abſurdus † Paterfamilias eſt, qui omittit ſereno tempore, expediendi pluviam, & vice verſa, *Joan. de Pined. in Job. lib.* [illegible] *verſ.* 3[illegible]. nec obſervare quando ſupremus ille Oeconomus vela & tapecias ſit expanſurus, Deus quippe nubibus utitur, tanquam tapeciis, quas complicatas habet, cum ſerenat, explicatas cum pluviam vult demittere. De ſignis vero pluviarum hæc habet [illegible]nius ſi ſol, inquit, in exortu, radios per nubes porrigit & medius erit [illegible] pluviam ſignificat.

Si [illegible] obſcurus emigraverit [illegible]
[illegible] ipſum autem hinc inde
Radii [illegible] ſcindantur, &c.

De ordine [illegible] quoq, apud [illegible] *Toſtat. in Exod. tom.* 1. dicen[illegible] quod [illegible] ſeri debeat, cum ſol eſt in libra, vel principio Scorpio[illegible] 128. Triticum cum ſol eſt in Scorpione, aut principio Sagittarii. Sed hæc [illegible], & tantum
de ordine. [illegible]

Caput

CAPUT II.

QVÆ IVDEX CONSIDERARE DEBEAT ante inquiſitionem.

SUMMARIA.

1. *Iudex cauſarum criminalium non tam de facto, quam circumſtantiis [illegible] inquirere debet.*

2. *Circumſtantiæ inducunt [illegible] ad veritatem.*

3. *Iudici [illegible] debet de delicto, priuſquam [illegible] circumſtantiis eius.*

4. *[illegible] conſtitui, [illegible] ho[illegible] [illegible] ectum.*

5. *[illegible] ſuſpicionibus [illegible] res incerta eſt [illegible].*

6. *Iudex [illegible] etiam nonnunquam [illegible] Cor[illegible] de [illegible] qui [illegible], [illegible] reum ſuper con[illegible] [illegible] incertis.*

7. *[illegible] torquetur: [illegible] ſit [illegible].*

8. *[illegible] plurimum conſiſtat [illegible] & [illegible] hominibus.*

9. *Quid in [illegible] præ[illegible]?*

10. *[illegible] culatione.*

11. *[illegible] Reipar[illegible] tes [illegible].*

12. *Iudex [illegible] ca[illegible] nus.*

13. *Iudex propriis oculis confidere, quam alienis credere debet.*

14. *Iudicium ne reddatur in conſpectu rei [illegible]abilis.*

15. *Iudex nec precibus nec lacrimis commovetur.*

16. *Iudex agrum Nar[illegible]ienſem imitabitur, qui [illegible] pecior redditur.*

17. *N[illegible] p[illegible] judicandum.*

18. *Re[illegible] vertere poteſt, contra inquiſitionem [illegible] factam.*

19. *Semper opponi poteſt, de non exiſtentia rei.*

20. *Quando delegatus poſſit corrigere decretum ordinarii?*

21. *Probaturus qualitatem rei, prius demonſtrare debet liquido ſubſtantiam rei.*

22. *An judex de veritate commiſſi flagitii inquirere debeat in delictu adulterii, Sodomiæ? ubi ſententia Boſſii examinatur, hac de re concepta.*

23. *Mandator cædis an urgeri poſſit inquiſitione, mandante nondum convento?*

24. *Ante capturam vel generalem inquiſitionem, utrum neceſſaria ſit facinoris commiſſi [illegible] demonſtratio.*

SI qua in parte judicii neceſſaria eſt diſcreti judicis induſtria, fides & ſinceritas, certè non poſtremum eſt magiſtratus fides, diligentia & providentia [illegible] in hac indiciorum provincia, indiciorum recta & decenti inveſtigatione [illegible]. Cum enim haud præſtat, nec ad inquiſitionem ſola, vel accuſationi [illegible] delatio ſufficit, *l.1.§.item [illegible]. ff. ad SC. Syl.* hinc tritum illud: S[illegible] quis erit innocens, &c. Si judex † non tam 1
de facto [illegible], quam de circumſtantiis facti inquirat diligenter, cum circumſtantiæ † demum perducant judicem ad veritatem, *c. oc-* 2
cidit. 23. q. fin.

Quod dixi judici [illegible] procedat in cauſa criminali, de ipſo † de- 3
licto conſtare debere, id habet hanc ſententiam, ne etiam reo † licet confi- 4

tenti fidem tribuat, qui in genere ſe aliquot patraſſe cædes, furta [illegible] fiſſe, ſe projeciſſe defunctum in mare, furtivam rem [illegible] ſe, &c. enarrat, multo minus in eo ſumet [illegible] judex rigidum [illegible] men, *Bald. in auth. [illegible] novo jure, C. de furt.* [illegible] *Ægid. B* [illegible] *num.* 15. ubi citat *Angel. in* [illegible] Nicolaum [illegible] reprehendentem qui [illegible] tradiderat tres reos, confitentes quod [illegible] viatores, [illegible] in mare projeciſſent, *vid. Ann. Rob.* [illegible] *cr. judic.* [illegible] cre & nervos, *Boſſ. d. loc.* ibi: nullum faciat fun [illegible]

5 ſione, cum enim nedum in † cauſa civili, in [illegible] nec pareat ſtipulationem validam, ne ſi quis hominem [illegible] bere ex ſtipulatu, neque addat, Stichum vel Sejum, q [illegible] precu *d. l. 6. §. 6. ff. de confeſ.* quanto magis dicendum [illegible] in c [illegible] & criminali *Bald. in d. auth.* ſed novo jure, nec refert [illegible] & certæ relationes, certa procul dubio maleficia, eorumque relata & demonſtrationes. Quia autem per diſtinctionem incertæ ſi [illegible] vel c [illegible] vel quia in electione erit, aut rei, aut actoris, uter ſolvi debeat, [illegible] ſub confeſſione rei individuum, quod expreſſum non eſt, neque [illegible] vel rerum, adeoq; informis plane ſit confeſſio, & [illegible] bit, indiſcretam, generalem & ambiguam ejuſmodi confeſſionem [illegible] eſſe in conſideratione, *Boſſ. d. loc. vid. Ioan* [illegible] *d. d.* [illegible] *num.* [illegible]

6 *num.* 223. *Specul. in tit. de ſent. verſ.* Titius fuit confeſſus, [illegible] ut [illegible] reum nullo adhibito rigore tam informiter ſa [illegible] Syndicatu, vel hominem ultimo ſupplicio inde afficere [illegible] *C. [illegible] car.* reum [illegible] ſtatuat, *l. 1. § 2. & 3. ubi Dd. ff. ad l. C* [illegible] [illegible]

7 ro ſic exaudiant hanc regulam, ut quoties per † [illegible] nonnihil de certitudine hac conſtet, confeſſio omnino [illegible] hæc Gandini rerum criminalium alias ſolertiſſimi ſententia, redundat res in idem principium & [illegible] quod incipere non poterat, [illegible] enim de [illegible] [illegible] liquido con [illegible] [illegible] dum [illegible] & conſtare de maleficio, certo [illegible] nihil hic [illegible], in [illegible] tum quippe adhuc, quia [illegible] fundamen-

8 to [illegible] † in genere res fragilis pernicioſa, & [illegible] maxime ficta dici- [illegible] ab iis, qui nocendi cupiditate [illegible], *Idem Gandin. in tit. de* [illegible] *verſ.* eſt enim fama, &c. Unde Virgil. Eclog. [illegible]

Quid loquar [illegible] Scyllam Niſi, [illegible] ſecuta
Candida ſuccinctam latrantibus inguina monſtris.

Manet & concluditur igitur hæc ſententia, judici ex omni [illegible] bitanter conſtare debere de maleficio [illegible], priuſquam ad [illegible] deſcendat, ſive reus confiteatur, ut [illegible] fama dictitet una, rem ita eſſe uti confitetur reus? Dubium [illegible]

quin,

quia, cum anteceſſit & rei confeſſio generalis & fama decens certitudinem
delicti [illegible], [illegible] pluravit demum judex, indicium hinc formetur va-
lidum & ſufficiens [illegible] quo ſenſu *B[illegible] opinio [illegible] loc. num. 19.* defendi
poterit atque [illegible]. [illegible] cautelam non pauci ex noſtris reliqué-
runt, conſulendo † [illegible] ita cauſa & occaſio fert, adeat vicinum 9
locum ubi delictum commiſſum eſt, quærat ex vicinis an certum ſit homi-
nem [illegible] eſſe [illegible] furta patrata eſſe, &c. Judicis quip-
pe † officium eſt, *[illegible] in Job. cap. 29. verſ. 16.* non vacare Philoſo- 10
phiæ & ſpeculationibus non neceſſariis, ſed potius inquirère in actiones ho-
minum, quod [illegible] Jehova ipſe Geneſ. 18. (inquit) Cla-
mor Sodomorum & Gomorreorum multiplicatus eſt, & peccatum eorum
aggravatum [illegible] deſcendam & videbo utrum clamorem, qui venit ad me,
opere compleverint, &c. *vide p. 1. noſtri tractatus, cap. 12[illegible].* Proinde vulgata &
hæc etiam ſunt brocardica: Judicem [illegible] timeri oportere & quod in præ-
paratoriis judiciis partes actorum ſint favorabiliores, quam reorum, contra
regulam † communem qua dicitur, partes reorum eſſe favorabiliores (ſci- 11
licet quoad deciſoria) *Joan. de Platea in §. item nemo, In ?. de ſidejuſſor num. 30.*
Plato de l. 2. Judicem [illegible] todem civitatis & [illegible] publicæ appellat, iracun-
dum [illegible] † generoſi canis contra fures & [illegible], ut ſagaci quoque 12
[illegible] ſolertia & perquiſitione reos, ne delicta maneant impunita, *Jo-*
han. [illegible] in Job. cap. [illegible] Cum ratione enim iraſci dicitur ille, cujus vin-
dictæ [illegible] bere [illegible], *[illegible] r. Niſ[illegible] 4 debeat ſuper.*
M[illegible]. [illegible] quocunque reus ſine fidiculis ſuper poſitiones
vel articulos [illegible] vel accuſatore productos, [illegible] in conſpectu judicis
ante tribunal [illegible], [illegible] prætor, qua fronte, [illegible], qua fiducia, qua
occaſione reus reſpondeat, quæ de re prolixè *part. [illegible] c. [illegible].* Et quod cauſæ diver-
ſæ ſubeſſ [illegible] generalis formatur vel [illegible], dum ſingulæ
circumſtantiæ examinantur, vel ponderantur [illegible] generali [illegible] ubi diſcepta-
tur de facto ipſo criminis, ubi agitur de [illegible] cauſa reſpectu loci, Judex
[illegible] advigilare [illegible] † propriis credat, quam alienis & 13
alienarum [illegible] habere [illegible] juxta illud [illegible] noſtræ ocula-
[illegible] quod [illegible] *[illegible] in Ep. [illegible] aure [illegible] lib. 5 pag. [illegible].*
[illegible] judicem, qui [illegible] prodi[illegible] dum inquirit &
exequi [illegible] † & [illegible] commo- 14
[illegible] inde à Fiſca-
li [illegible] quæ [illegible] & quæ ſq;
[illegible] mulier [illegible] efficacia
cacia [illegible] *[illegible] var. [illegible]* Sic [illegible]
in genere inquirens [illegible] ſuperficialiter & per-
functorie, ſed medullitus & nervoſe perſcrutari debet, [illegible] & [illegible]
circum-

circumſtantias, nempe ne litem ſuam faciat, incidatq; in pœnam talionis; ne-
15 que enim † precibus vel lacrimis flecti oportet jus dicentem, [illegible]
quo plus commotus eſt, precibus vel commiſeratione, eo conſtantior & tarda-
16 tior erit & imitabitur Narvienſem illum † [illegible], qui [illegible] red-
ditur, &c. *Johan. de Pined. in Job. tom. 1. cap. 18. v. 18 part 1. de judi. [illegible]*
num. 7. neq; obſtat, quod *Cicero in lib. de amicit. ait*: Judicem non eſſe [illegible]
tuendum in conſpectu rei delectabilis, de quo judicandum eſt, ut [illegible]
ſit. Ergo nedum in conſpectum judicis transferantur [illegible], u[illegible]
commoveri poſſit ad miſericordiam potius, quam juſtitiam legalem exercen-
dam. [illegible] recenſet quanopere diſceptatum ſit Trojam captam an He-
lena, cujus paulò ante meminimus, rapta, eſſet reſtituenda, priſtino marito
Menelao nec ne, & qua pœna alias afficienda [illegible] ab [illegible]
17 præſens dum inſigni forma ejus caperentur judices abſolvebatur. [illegible] non †
exemplis ſed legibus judicandum eſſe, *l. 13. Cod de ſent. [illegible]* non
quod fit, ſed quod jure fieri debet eſt attendendum, [illegible] incumbere ut
de facto facinoris [illegible] inveſtigat diximus, non ut [illegible] & [illegible]
rei frangatur affectibus, & juſtitiam ſusq; deque [illegible] ſi quis autem
judicum objecto quodam moveatur, res eſt exorbitans, & nihil [illegible], præ-
terquam ut judex rationem reddat, omiſſi vel commiſſi [illegible]. *Tiraquell.*
18 *de pœn. in proœm. Parif. de Put. in tr. Syndic. publ.* Quicquid [illegible] adverſus
proceſſum ejuſmodi exceptiones nullitatis opponere poſſit, [illegible] entis enim
nulli ſunt effectus vel accidentia, *Ægid. Boſſ. d. loc. in tit. de delict. n. [illegible]*
19 *[illegible] loquitur in c. cum Joannes de fide in[illegible].* ſemper † poteſt opponi [illegible] non
20 exiſtentia vel ſubſtantia rei, imò inquiſitor vel delegatus † [illegible] proceſ-
ſerit inverſo ordine, ſententiam quoque latam, & in rem judicatam [illegible],
revocare poteſt, irrequiſito delegante, utpote homine, qui dicebatur occiſus
a reo, adhuc vivente, vel in rerum natura non exiſtente re, [illegible]
[illegible] amiſſa, quam furto ſubtraxiſſe reus eſt confeſſus. *Idem in c. [illegible]*
21 *[illegible] re jud.* hinc vulgariter dicimus. Quod [illegible] † [illegible]
primo loco probare debeat ſubſtantiam [illegible]
conſiſtit, *gloſſ. in l. ſi arbiter, ff. de probat. Bald. [illegible] 4 [illegible]* Qua regula præ-
dominante, non pauci colligunt quoad reſpectum [illegible] quidem,
22 dum patrata ſunt, poſt ſe non relinquunt patrata & manifeſta [illegible], uti †
adulteria, Sodomiæ, &c. [illegible] eſſe antedicta. Qui enim [illegible]
[illegible] commiſſum, ſive Sodomiam [illegible] probare [illegible]
[illegible], cum puer [illegible] annorum ad Venerem impotens dicatur, [illegible]
14. *uti Boſſius tradet [illegible] malef.* & multis [illegible] allegans [illegible]
tamen ſuſpecta [illegible] pluribus [illegible] dolis, pravis [illegible]
tiis. Etenim [illegible] aperientur [illegible]
[illegible], committebantur [illegible] *de*
fort

jure connub. [illegible] *de* [illegible] *ſtip. cap.* [illegible] minum non [illegible] ndum [illegible] noviſſima, [illegible] ſcit, quæ [illegible] & poſt [illegible] diverſ [illegible] materiæ [illegible] quæ [illegible] cum [illegible] eradica [illegible] ſunt, [illegible] pe in incendium [illegible] *Anton. Fab. lib.* [illegible] *tit. 22. Cicero* [illegible] *Philipp.* [illegible] *lib. 14.* tertius dubito, Utrum Sodomit [illegible] tivum [illegible] culabit [illegible] renitatis vel impotentiæ, quoniam in delicto hoc excepto & [illegible] conatus & effectus delinquendi æquè [illegible] atur, ac ſi delictum [illegible] conſummatum *vid. p. 2. de Sodomia.*

Præterea [illegible] ditur, ex regula illa & hoc conſectarium, quod † manda- 23
tor cædis nulla urgeatur inquiſitione, priuſquam mandatarius non eſt conventus, *l. 66 §. 4. ff. de furt.* ſuggerit hanc juris ætiologiam, [illegible] ordinis ratio, à qua argumentum depromptum in jure eſt alias validiſſimum, [illegible] ratio quippe ordinis [illegible] actum reddit nullum, *Eberh. in topic. in l.* [illegible] *Boſſ. d. loc. num. 19.* [illegible] Sed adverte quia debet conſtare expreſſè de principali, alias non poſſet puniri auxiliator nec mandator, adeo quod neutrum [illegible] teſtis valeat, qui deponit contra mandatorem, niſi principaliter [illegible] contra homicidam, an autem ex omni aſſe tuta ſit regula præſens, hæſito: cumprimis fama vel alio judicio generali ſtringente adverſus homicidam, quo reſpectu, nullus dubito, quin [illegible] contra utroſq; inquiri poſſit, ne dum judex nectit moras, ipſe homicida dilabatur, *vid. part. 1. cap.* [illegible]

Colophonis loco notatum hic eſto: Quod quæ hactenus [illegible] dicta ſunt, ſcilicet conſtare debere de delicto ante omnia ſic accip [illegible] ut quoq; ante capturam † de maleficio, imò ante inquiſitionem, manife [illegible] eſſe o- 24
porteat factum de quo quæritur, *Carpzov. in tr. mal. f. de præſ.* [illegible] *Prun* [illegible] *dic.* [illegible] *ol.* [illegible] *p. verſ.* ſed idem, [illegible] eam tamen hodie [illegible] cumprimis quando delictum commiſſum eſt, in locis [illegible] memini quoq; reſpondiſſe Acad. J. latrunculum [illegible] oticæ gentis, qui [illegible] ſubdendum eſſe, modo de delictis quæ fatebatur non ita conſtaret, utrum eſſent revera patrata nec ne! ſaltem quia indicia ſtringebant generalia [illegible] conſpicua. Tutius verò, factum [illegible] magiſtratus, ſi ad regul [illegible] generalis [illegible] animi ſui motus [illegible] que etiam conſcientiæ & conſultum [illegible] dies [illegible] de re graviter [illegible] Præclarus & Conſultiſſimus Dn. Johannes Wolckmar J [illegible] & Conſiliarius Cellenſis, quem honoris cauſa h [illegible] Quod J [illegible] dorn à Modeſtino [illegible] me te [illegible] & in p [illegible] miſſus. Quod cum Lipſiæ [illegible] capitalem reo, qui [illegible] cædem ſub tortura, quam [illegible] anno [illegible] commiſſam [illegible] quopiam latrunculo, inde in tantas conſcientiæ [illegible] ut vix

ſolatio erigi poſſet, vel quovis remedio, quin potius cœcitate mentis faſcinatus exiſtimaverit, caput vituli [illegible] coctum ad menſam, ubi [illegible] erat, allatum caput eſſe rei illius innocentis, cui imprudens [illegible] ſententiam, exindeq; per [illegible] paucos poſt dies, ſpiritum ex[illegible].

Deniq; quid in cauſa ſortilegii vel Mag[illegible], ubi reus confitetur [illegible] cum Sathana pepigiſſe, divagatum per aërem per [illegible] montes, [illegible] lupum, felem, vel noctuam fuiſſe converſum, &c. Sane impoſſibile [illegible] inveſtigare [illegible] uti calvis eſt in propatulo, ſubſiſtendum [illegible] vigore prædictæ regulæ? Reſpondi ante & diſtinxi ante, inter [illegible] quæ poſt ſeſe non [illegible] certa & manifeſta veſtigia, ut Sodomia, adulterium [illegible] ſortilegium, & crimina ita comparata, quorum [illegible] omnino [illegible] durant. Alias conſtit. crim. diſponit & præſcribit judici modum agendi in præſentia [illegible], *art.* 44. ſed hic abrumpo & propero ad alia.

CAPUT III.

DE INQUISITIONE.

SUMMARIA.

1. *De officio [illegible] nobili & mercenario agitur.*
2. [illegible]
3. [illegible]
4. [illegible]
5. [illegible]
6. *Inquiſitio [illegible]*
7. [illegible]
8. [illegible]
9. [illegible]
10. [illegible]
11. [illegible]
12. [illegible]
13. [illegible]
14. [illegible]
15. [illegible]
16. [illegible]
17. *Ubi deſinit generalis, ibi ſpecialis incipit inquiſitio.*
18. [illegible]
19. [illegible]
20. [illegible]
21. [illegible]
22. [illegible]
23. [illegible]
24. [illegible]
25. [illegible]
26. [illegible]
27. [illegible]
28. [illegible]
29. [illegible]

33. *[illegible] parte [illegible].*

34. *An [illegible] inquiſitionem [illegible], [illegible] ad [illegible] nem procedere.*

35. *Inter [illegible] rendum [illegible].*

36. *[illegible] de [illegible] delicto.*

37. *[illegible]*

38. *De [illegible].*

39. *[illegible] cludunt.*

40. *[illegible] non [illegible].*

41. *[illegible]*

42. *[illegible]*

43. *Pro [illegible] admittitur [illegible].*

44. *Item [illegible].*

45. *[illegible]*

46. *Pro [illegible].*

CÆterum ut ab initio hujus noſtræ materiæ, *c. 1. p. 1.* Judicium criminale in Nobile & Mercenarium diſtinximus, ita pro re nata [illegible] hujuſmodi ſubjecta, haud immerito diſpeſcimus ordinem agendi in hac [illegible] materia in inquiſitionem, quæ ut maxime † officium judicis Nobile reſpicit, 1 eoq; paſſim expeditur, *Angel. [illegible] eſt quædam inquiſitio, &c. n. [illegible]* & accuſationem, cui non niſi Mercenarium officium judicis ſubſervit, *l. reſcripto, § ſi quis, ff. de mun. & hon. l. qui accuſare, ff. de accuſ.* de denunciatione quæ tertiam ſpeciem perſecutionis [illegible], *ag. t. c. 2. p. 1.* quo lectorem remitto. Deinde ut Nobile † officium vincit & excellentius eſt Mercena- 2 rio ita inquiſitio longe favorabilior eſt & eminentior accuſatione, *Angel. d. loc. num. [illegible]* veritas tamen [illegible], accuſatio tardo progreditur paſſu, hinc & Judex [illegible] eſt per inquiſitionem † proce- 3 dens, accuſatore exiſtente [illegible] *d. q. num. 37[illegible].* Porro inquiſitio authoritate plurimum, [illegible] præſerit, ſubducto officio nobili, hinc ſtatuta in favorem inquiſitionis inducta non extenduntur ad accuſationem, *text. & gl. in c. [illegible] de [illegible] in 61[illegible].* Definitur autem † inqui- 4 ſitio ut rem tandem a capite exordiar, quod ſit jus vel poteſtas inquirendi, mediante officio nobili in delinquentes & coercendi vel puniendi facinoroſos, *DD. in l. 3 ff. de off. præſid. Angel. [illegible] in d. [illegible].* hæc eſt quæ [illegible] inquiſitio, in explicatione definitionis non commorabor, quia ea quæ ſubſequuntur, ſatis ſuperq; exhibebunt definitionis declarationem & intellectum. Diſpeſcitur inquiſitio † in generalem & ſpecialem; Generalis inquiſitio ſubdivi- 5 ditur, in inquiſitionem quoad perſonas, (1.) quæ ſpecialis aliàs eſt quoad delictum de quo [illegible] quæſitio, ut cum quidem conſtat de delicto commiſſo, at quinam ejus author ſit adhuc ignoratur, *l. [illegible] § mandantis, ff. ad L. [illegible]* (2.) Generalis † dicitur inquiſitio cum judex [illegible] metum exercet, vel 6 præſes provinciæ generaliter inquirit tam in delicta quam perſonas delinquentium, quo ſpectat *l. [illegible] ff. de off. præſid.* Præſidis officium eſſe [illegible] provinciam malis hominibus. (3.) Generalis dicitur inquiſitio, [illegible]

verſitate nonnulli deliquerunt, quæ ſpecialis eſt, quoad perſonas delinquentes, *l.169.§.1.d.reg.jur.* niſi ipſa univerſitas pulſata campana vel tympano [illegible]

7 gente deliquerit, quarum † concives quidem vel incolæ ſinguli per decimationes eſſent coercendæ, gratiæ tamen vel humanitatis ratio [illegible], ut

8 vel pœna pecuniaria coerceatur † univerſitas, niſi læſæ majeſtatis crimen admiſerit, vel prorſus impunita relinquatur juxta illud:

Ob populum multum [illegible] permanſit inultum.

Uti Henricus [illegible] non dicunt qualis is ſit numero Dd [illegible] remiſit Brixienſibus perduellionis crimen, alias ad aratrum damnandis, *Gail. 2. de pac. publ. cap. 9.*

9 *num. 28. Schurff. conſil. 55. cent. 3.* Etenim antiquitus incenſis & dirutis † civitatibus, tandem ſolo inducebatur aratrum, *unde Horat. [illegible] Od. 1[illegible]*

———— Imprimeretq; muris

Hoſtile aratrum exercitus inſolens.

10 Quo pacto everſa communitas † mori dicebatur, *Bald. conſil. [illegible] Borcholt. de feud. 29. num. 6. Roland. à Valle conſil. [illegible] n. 2[illegible]. Cravett. [illegible] W[illegible] 5. cap. 1. Eberhard. à Weihe in tract. de feud. [illegible]* [illegible] tales ſunt, &c quanquam in favorabilibus [illegible], *Dd. in*

11 *l. 1. ff. ad municip. [illegible] 4.* Generalis † dicitur inquiſitio quoad delicta [illegible] quoad perſonas, ut cum Rector Eccleſiæ per officiales inquirit in delicta cōmiſſa, eaq; coercet, ne morbida facta pecus totum corrumpat ovile, quo ſpectat locus ſacer, nempe malum de Iſrael extirpandum eſſe: fundatur hæc inquiſitio, *in c. per inquiſitionem ext. de accuſ.* Spectat quoq; ad hunc claſſem [illegible]

12 quando † Fiſcalis vel Syndicus inquirit in crimina & [illegible] ipſius Principis vel delicta familiæ, *Angel. de Are[illegible] d. [illegible] Paris. de Put. [illegible] in princ.* per aliquot paginas, hodie coram curia [illegible] in cauſa civili conveniuntur Principes a ſubditis vel coram Camera, *Gail. 1. obſ. 1.* Reges coram

13 Parlamentis, *Bodin. lib. [illegible] c. 9.* ſtatus imperii † [illegible] Camera vel [illegible] Cæſarea, ſive civilis ſive criminalis moveatur quæſtio, [illegible] *Mind[illegible]*

14 *Proceſſ. extr. [illegible] cap. 9. Gail. de P. P. 2. cap. 1. [illegible]* De inquiſitione ſpeciali *part. 1.* quodammodo diximus [illegible] quod ſit [illegible] qua mediante officio magiſtratus, vel [illegible] poteſt & debet reſpective in [illegible] *Angel. Aretin. [illegible] d. §. [illegible]* eſt [illegible] dico [illegible] verum [illegible], quod lege ſibi tributum [illegible] *arg. l. 3. ff. de off. [illegible]* ut [illegible] nam, [illegible] lege [illegible] Sic culpa [illegible]

15 [illegible]

[illegible]

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tuis. [illegible] inquirit [illegible] formula, ut [illegible]
rit [illegible] multitudine [illegible],
ait [illegible] ad
delinquendum [illegible] Sanè, [illegible]
qui [illegible] eat [illegible] cum [illegible] est,
[illegible] in judicii Dei [illegible] viget, *l. [illegible] Cod. de iud.* qui per [illegible]
ipſe ſeſe in thro[illegible] injuſtitiæ [illegible] Sathan, quo præſide [illegible]
rectore, quid aliud [illegible] præter [illegible] confuſio & ruina rerum [illegible],
ut enim flumina ingentia [illegible] vi [illegible] occultiori, vel [illegible]
ſic regna & populi transferuntur propter injuſtitiam, & principes [illegible] de e-
rum, [illegible] ſcriptum eſt: ſcindes fluvios terræ, *Joan. de
Pinea in [illegible] cap 34 ve[illegible] ſ. 4 n. [illegible] p [illegible].* Præterea [illegible] generalis & 16
ſpecialis videntur ſibi [illegible] eſſe affines [illegible] conglutinatæ, [illegible]
poſſint ubi enim generalis [illegible] ibi conſe[illegible] incipit † ſpecialis inquiſitio, 17
Homod. in tr. [illegible] [illegible] ad inveni[illegible] dunt[illegible] ad [illegible]
ſtructionem, ut poſtea [illegible] ad aliam ſpecialem [illegible] *ex Bald.* [illegible]
v[illegible] Cod. de [illegible] num. 4. aliud eſt quo ſe [illegible] judex dirigit in
viam facti inquirendo, aliud quo ſe dirigit in v[illegible] juris torquendo, *Aretin.
in d. §* [illegible] *quædam, & [illegible] 2[illegible]* [illegible] inſeparabilita[illegible], quod nem-
pe turpe [illegible] mittat illum, quem per famam [illegible] exploratam ſcit pere
[illegible] *l. [illegible]*, † *Cod. de off. præſ. provinc. quis tit non* 18
extat [illegible] C. de [illegible], ſentiens, unde cognoſcendum
eſt quam periculoſum ſit committere calamo allegationem non revolutam.
Staturum [illegible] mentionem faciens inquiſitionis, & generalem & ſpecialem 19
non [illegible], *v. d. Aretin. d. l[illegible] num. [illegible]8.* Alias [illegible] † materia di 20
citu difficilis, de qua [illegible] ſcribit magis ſeſe involvit, quam expedit, *Felin. in
c. qualiter d[illegible] accuſat.* ſcilicet propter inſignem affinitatem, & pe[illegible],
quam relatio generis cum ſpecie regulariter infert, *Marian. in d. c. qualiter.*
Quocirca in definitione cautum eſt; Quid judex inquirere poſſit ac de-
beat. Quanquam enim inquiſitio gen[illegible] non adeo adſtringat judicem, qui
officio ſuo ſatisfeciſſe videbitur, quandocunque publicato [illegible] promulga-
to [illegible] facinoroſos quosvis, in territorio ſuo fortè degentes [illegible] 21
[illegible] ficium eſt purgare provinciam malis hominibus, *l. 13. [illegible] de off. præſ.*
hi[illegible] vulg[illegible] us, quo[illegible] judex procedit, hoc pacto non requiruntur
indicia [illegible] infamationes, *[illegible] B[illegible] d. loc. num. 2[illegible]* qui tamen quandocunque
[illegible] vel expertus eſt [illegible] delictum [illegible]
patratum, quod diſſimulari non [illegible]
tat in individuum eouſq; deſudare, quo [illegible]
tin. d. loc. n. [illegible]. Porrò neceſſitudo ejuſmodi [illegible] apparet, quod [illegible]x
generaliter inquirens quoq; reo teneatur communicare copiam † indicio- 22

 rum,

rum, quam ſententiam defendit, *Boſſ.d.loc.num.22.* quæ [illegible] tamen eſt & rejicienda inde. (1.) Quoniam inquiſitio generalis expeditur breviſſima & ſuperficiali judicii via & compendio, hinc eſt, quod teſtes ſub hac [illegible] admiſſi, ſæpe repellantur in judicio inquiſitionis ſpecialis, *DD* [illegible] *ipſe Boſſ. d. loc. num.* [illegible] ibi, & pro informatione ſcias, quod ubi [illegible] fuerit formata inquiſitio [illegible] ſuper fama, quoad deveniendum ad inquiſitionem ſpecialem, & ſic quærere in genere an talis eſſet diffamatus, [illegible] re ex relatione non fide dignorum, &c. & ratio eſt, ſubdit quia [illegible] inquiſitio eſt modici præjudicii. *Marian.Socin.in d. c.* [illegible] *de* [illegible] Quod [illegible] [illegible] inter rixas forenſes diſtracta hac cognitione & inquiſitione generali, reus [illegible] quidem videret, ſe in judicio inquiſitionis ſpecialis [illegible] procul dubio ſit dilapſurus. Reorum quippe eſt [illegible] non de glande legenda ſed de ſanguine humano agitur. *Menoch.* [illegible] *d.1.cap.8* [illegible] *num.* [illegible]4. neq; enim homines exſculpuntur è quercu vel de puteo ſuppetit, unde ſuis uſum reparetur, *Du* [illegible] *n.* [illegible] Porrò quod diximus: admitti in prædicto caſu teſtes inhabiles, quia [illegible] ſiquidem quærelator, inſtigator vel promotor ſoleat inter[illegible] cuſtodiæ accommodat [illegible] dicens per merum officium, quo fungitur [illegible] Utrum inimicus inquiſiti admittatur ad hoc officium, quod [illegible] diſcrepat, *vid.Boſſ.d.loc.n.25.* Deinde [illegible] utriuſq; judicii exinde [illegible] pateſcit, quod uti fama probanda in materia inquiſitionis ſpecialis, quæ eſt quaſi cauſa [illegible], cujuſvis inquiſitionis [illegible] debet à viris honeſtis, fide dignis, non inimicis nec malevolis [illegible]. Sic in judicio inquiſitio-

23 nis generalis fama † perinde eſt probanda non [illegible] adeo ut fama decenter probata in judicio hoc inquiſitionis [illegible] judicio inquiſitionis ſpecialis, [illegible] ibidem in loco judicii [illegible] alio judicio, quanquam *Boſſ. d. loc. n.* [illegible] *8. & ſqq.* [illegible] *ante n.24.* [illegible] eſt [illegible] conditionis opera [illegible] mala opinio, etſi aliud [illegible] ſufficiens ad torturam [illegible] ne adminiculis pareie [illegible] eſt. [illegible] *art.* 2[illegible] quæ [illegible] quæſtionem, niſi [illegible] caſu excepto. [illegible] Hoc tamen [illegible] diſcrimine, [illegible]

24 [illegible] generalis [illegible]

[illegible]

tio, quia [illegible] ante [illegible] pars [illegible] agendum [illegible] *post. & nos Bos.* & multi [illegible] per [illegible] reum eſſe audiendum, eidemq; copiam [illegible] dandam, [illegible] quam opinionem [illegible] communem referri idem [illegible] *in [illegible] de* 25 *inquiſit. alleg. ans text. c. qualiter. 24. ve [illegible] ibi debet [illegible]*, quod capitulum [illegible] noſtro judicio nonniſi inquiſitionem præſupponit [illegible] lem, quam explicationem evincit [illegible] textus, dicit enim [illegible] & [illegible] ſtum eſſe reo danda, ut defenſionibus [illegible] se reducat, &c. Cur vero [illegible] iam lata dilabendi [illegible] in præſentiarum non breveis [illegible] ſupra diximus? Deinde loquitur de exceptionibus [illegible] & inquiſitione contra [illegible] eſdem [illegible]: Contextus præcedens [illegible] ratio [illegible]. Sin tamen inquirendum ſit neceſſitate [illegible] poſtulante, [illegible] ordinem procedendi [illegible] inquiſitionis, & ſcandalum [illegible] tur [illegible], quibus [illegible] qui [illegible] debebant, [illegible] & morum præſtantia, confundantur, [illegible] ſimilis, [illegible] exædificant. Al[illegible] guunt, inter inquiſitiones, quæ [illegible] querulante expediuntur, [illegible] ne, [illegible] necessariam eſſe [illegible] contentu, hic non utiq; *Idem [illegible]* [illegible] non eſt neceſſe [illegible], nec diffamationem [illegible] *C. de [illegible] rd, Alexand. [illegible]* [illegible] communis. Quod judex non teneatur [illegible] partem. *Angel. [illegible] C. de qq. [illegible]* [illegible] ſit neceſſaria [illegible] ne vero quid [illegible] eſt annotandum, hic [illegible] ut perfecti [illegible] hac inquiſitione formata explorent [illegible] conſilia, vel ſuperiori referant, quid agendum & quomodo tam quoad [illegible] quam ſpecialem inquiſitionem [illegible] præterea [illegible] generalis & ſpecialis, quod [illegible] non [illegible] videlicet delictum eſſe commiſſum, ſed in modo [illegible], *[illegible] de [illegible] & [illegible] pretor. [illegible] de iniur. [illegible] l. libe[illegible]* [illegible] inquiſitio generalis requirit [illegible] modum facti vel [illegible] omnino deceet, quam [illegible] reſpectu [illegible] ſit [illegible] [illegible] inquiſitio [illegible] atq; plurimum ſequi debet abſolutum [illegible] obſervationi judicii, *[illegible] m. [illegible] mod. [illegible] Boſ. d. [illegible] n. 77.*

Alias quæ exceptiones opponuntur contra inquiſitionem ſpecialem,

æquuq;

27 eæ quoq; ut plurimum enervant, & evacuãt generalẽ † inquiſitionem, [illegible]
28 exceptiones omiſſarum ſolennitatum, ſi quas [illegible] vel ſtylus [illegible]
29 rat, *gl. in [illegible] 1. de obl. libelli, & text. c. qualiter. [illegible] de accuſat.* (2) non [illegible]
30 rei, cujus perſona eſſe debet, ad minimum per duas demonſtrationes, [illegible]
31 *in d. l. 3. [illegible] ad accuſat.* (3.) erroris vel falſæ relationis, ut cum [illegible] pro alio exprimitur, *arg. l. 1. ubi D. A. ff. ſi menſ. [illegible] ſ. mod. dix [illegible] 1. Alex. in l. 13. ff. de inſt. act.* quo pacto ſi unum delictum in inquiſitionem [illegible] citur, aliud probatur, abſolutoriam ſententiam ferendam eſſe. [illegible] (4) Adde ſi delictum cum quadam qualitate proponitur, [illegible] qualitas [illegible] batur inquiſitio evacuatur, *[illegible] cor [illegible]. 121. 2 [illegible] num. 4.* quæ ſententia nobis [illegible] ctenus vera apparet, quoties delicti qualitas ipſam [illegible] ſubſtantiam [illegible] nit, adeo ut non probatâ qualitate, delicti con[illegible] leges, ut cum adulterium deferat judici [illegible] vel accuſator, [illegible] circumſtantias vel qualitatem facti allegat, probare [illegible] propoſuerit non tam in lecto nudum concubuiſſe [illegible] ſed trementibus lumbis cũ venia loquar una com[illegible] verba ſolent uſurpare interpretes, hanc qualitatem [illegible] nequit ille, procul dubio ſuccumbat, nec inquiſitio erit [illegible] ſed inſtas; atque hæc probatio [illegible] proceſſum [illegible] nit: *Zanger. de qq. & tort. paſſim. Reg.* ſufficere [illegible] tionem, prout inquiſitionis Proceſſus requirit, [illegible] bandæ vel demonſtrandæ rei, circumſtantias eas [illegible] & plane [illegible] c[illegible] eſſe eſt, ne calumni[illegible] apertatur & inſontes [illegible] lationibus [illegible] cum [illegible] homines [illegible] dum eſt. (5.) Porrò evacuatur inquiſitio quoties circumſtantia loci [illegible] poris non allegatur neq; demonſtratur, *[illegible] ff. de accuſat.* [illegible] expreſſum [illegible], ibi conſul & dies apud illum prætorem vel proconſulem [illegible] *[illegible] pr[illegible] & [illegible] l. [illegible]* delicto quod [illegible] [illegible] (6.) Annullatur inquiſitio [illegible]

[illegible]

32 [illegible]

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cia aliqua producat ſufficientia quæſtionum, ſin appareant [illegible] argumenta, ex actis [illegible] ſive generalis ſive ſpecialis inquiſitionis [illegible]. Et enim [illegible] poſſe † judicem inquiſitorem vel accuſatore [illegible] deficiente, [illegible] parte, [illegible] & proſequi [illegible] nec non ſuo officio [illegible] ſupplere & corrigere [illegible] *§. fin. ff. de accuſat.* [illegible] intra dies [illegible] *Alex.* [illegible] *ff. de publ. judic.* [illegible] quid ſi pendente fiſcali [illegible] inquiſitione vel [illegible] convinci [illegible], (qui caſus nobis [illegible] offert) teſtimonio [illegible] bilium, ut inimicorum rei, & propinquorum defuncti [illegible] utrum [illegible] tranſire poſſit judex ad quæſtionem per regulam: quod [illegible] inhabilium jurata depoſitio pariat indicia quæſtionum, *Farinac. in* [illegible] *mo tractat.* [illegible] *lib.* [illegible] *part. 1 cap.* [illegible] dubitare [illegible] dummodo indicii [illegible] non [illegible] bilis, ſed [illegible] relatione [illegible] teſtis enim inimici depoſitio adeo eſt odioſa, & [illegible] reprobata, ut illius † dictum non ſufficiat ad [illegible] delictis exceptis, quæ alias regulariter teſtibus inhabilibus probantur, quoties decens & legitima probatio haberi nequit [illegible] *Felin. in c. cum oporteat de accuſat.* [illegible] *§. præterea ff. de qq.* [illegible] adſtruit, quod [illegible] mediante tortura [illegible] manet ergo unius teſtis [illegible] quæ nec indicia quæſtioni [illegible] infert, nec ſemiplenam [illegible] hæc [illegible] prædicari [illegible] commune. Si quem oderunt, [illegible] *Joan. de P* [illegible] *ed. in Job. cap. 33. tom. 2. verſ. 13.* & præſumuntur [illegible] facti inimici ſitientes ſanguinem rei, longè magis, quàm inimici [illegible] loquendo ſic dicti, qui ne homicida dilabatur ſanguine occiſi, obſcurant [illegible], quaſi catenis conſtricti videntur, *Weierus de præſtigiis dæmonum pa*[illegible]*m. Joan. Wolf. 2 lib. memor pag.* 885. quæſtio eſt cumprimis hic de qualitatibus † delicti [illegible] 36
eſſe conſtat, at quo affectu in hypotheſi eſt reus allegat [illegible] neceſſitatem, in cujus probatione [illegible] potiſſimùm hæret [illegible] verò uti ſupra diximus, qualitas delicto [illegible] involuta, ut [illegible] onſtratione non poſſit ferri condemnatoria, ſed potius abſolutoria ſententia, non minus ut ipſum factum probari debet, deficiente probatione illius qualitatis, [illegible] accuſatio Fiſcalis, quæ longè majus [illegible] malum [illegible], qualitas autem ejuſmodi eſt ipſa † delicti [illegible] præſupponit, *Bart. in l.* [illegible] *§. fin. ff.* 37
de furt. [illegible] *num.* [illegible] ubi del[illegible] [illegible] eſſentiam acquirunt, & ſine eo exiſtere non poſſunt, adeout qui homicidium ex lege Cornelia probare nititur, effectivè, dolum probet neceſſe eſt, [illegible] corruet [illegible] rei, defenſionem neceſſariam [illegible] utrum vero [illegible] probanda ſit, teſtimonio iſtorum teſtium ad quæſtionem [illegible] dubitatur,

bitatur, quàm ſi thema eſſet de condemnando ad ſupplicium reo ex depoſitione ejuſmodi teſtium. Quæſtio enim res eſt ardua, quæ [illegible] corporis irreparabilem continet, *Ægid. Boſſ. in d. tract. crim. in tit.* [illegible],
38 *num.*12. Cæterum ſi n † dolus probatus ſit, & hoc ipſo intentio rei [illegible] omnis plana [illegible], atque hæc probatio nonnihil merebitur [illegible], quandoquidem dolus regulariter præſumatur, qui in [illegible] uti in materia pœnarum civilium loqui aſſolemus, *per l.* [illegible] *ſa*: non excludit, *Aretin. conſ.* 8 [illegible]. *Alex. conſ.* 203. *volum.* [illegible] plures
39 ſint caſus & cauſæ, † quæ doli præſumptionem tollunt [illegible], ut cum reus ſponte ſe ſiſtit judicio, vel quando aufugere poterat, [illegible] loco delicti, *gl. in l.* 1. *ad l. Cornel. de Sicar. Cæpol. conſil.* 3 [illegible] litas verò vel forma illa ſpecifica à reo eliſa purgat omnem [illegible] pœnam extraordinariã producit, nec dubium eſt, quin qualis [illegible] defenſionis neceſſariæ evacuat ancipitem, [illegible] litas, probationem, quo expedito & quæſtio rigoroſa & pœna [illegible] titur, in dubio enim quod ſupra quoque [illegible] *penult. ff. de pœn.* Nihil afferam de præſumptione [illegible]
40 depromitur ad evacuandam inquiſitionem, vel mitigandam pœnam, qui † retro nunquam homicida factus eſt, non præſumitur [illegible] hominem, *vide Boſſ. d. loc.* qui in rixa tumultuatur & [illegible],
41 præſumitur animum occidendi habuiſſe, ſi conſtat occiſum moviſſe † [illegible] turbas, provocatus proairęſin habuiſſe occidendi dicitur [illegible] metu accurrunt amici ut ſuccurrant periclitanti, vel [illegible] ipſimet offenſi ejuſmodi parant improviſa, quæ nec [illegible]
42 [illegible] præmeditari poterat inſperatum rixæ eventum, provocatus [illegible] & omnino præmeditatur, quo pacto [illegible] modo vel [illegible] ſarium ſic propulſet, ne ipſe pereat; atque illi [illegible] nonem pœnæ præ ſe fert, [illegible] In cauſa hon[illegible] conſtat, præſertim ubi [illegible] & nobili [illegible]
43 [illegible] dicitur, *vide* [illegible] *contra* [illegible]
44 nore con[illegible] defenſionis [illegible] † mentiri dixerit [illegible] [illegible] ſe [illegible] *Apoſt.* [illegible] *ad Corinth.* [illegible]
45 [illegible] magis, ipſam gloriam [illegible]

[illegible]

inquiſitiones, quàm probarunt [illegible], nedum [illegible] generales, eximantq; à pœna ordinaria [illegible], vide [illegible] num. [illegible] [illegible] † [illegible] + 4
tur, qui modo [illegible] [illegible] dium calore iracundiæ perpetratum, non puniatur pœna ordinaria, ut quando quis verbis injuriatus fuerit [illegible], & quaſi provocatus ad arma, &c.

CAPUT IV.

DE MODO ET FORMA INQUISITIONIS.

SUMMARIA.

1. Non niſi judex competens inquirit.
2. [illegible] ſi judex ſit delegatus.
3. Fama [illegible] [illegible].
4. S[illegible] [illegible] ex fama pro[illegible].
5. Quando judex [illegible] inquirere fama loquente.
6. Inquiſitio generalis de [illegible] debet & [illegible] comprehendi.
7. An [illegible] inquiſitio [illegible] [illegible] rendum.
8. Inquiſitio generalis non [illegible] illius [illegible].
9. Generalis inquiſitio [illegible] [illegible].
10. Generalis inquiſitio [illegible] circumſtantias [illegible] & tempus [illegible].
11. [illegible] contestatio [illegible] qua [illegible].
12. Citatio eſt janua cauſæ, quæ an requiratur in hoc proceſſu.
13. Refutatur ſententia Aretini in [illegible].
14. An teſtes [illegible] probentur in hoc judicio [illegible].
15. Index [illegible] in [illegible] in [illegible] hac materia.
16. An copia indiciorum ſit danda reo in [illegible].
17. Refutatur ſententia Franc. Bruni.

HActenus diſcurſive [illegible] & generalis & ſpecialis inquiſitionis definitiones, & quæ ſubinde occurrebant notatu digna [illegible]. Modus & forma inquirendi conſiſtit in hiſce, (1.) ut judex † ſit competens *l. 1. & tit. C. [illegible] compet. judic.* ubi conſideranda ſunt (1.) an judex ſit ordinarius vel delegatus, 1
& utrum delegans habeat jus delegandi, *l. 2. C. Ubi non comp. jud. l. [illegible] C. qui pro ſua jurisd.* (2.) An delegatus † judex ad omnia in territorio vel provincia 2
emergentia delicta, vel ad quævis [illegible] ſaltem ſit ſubſtitutus, *l. [illegible] C. de [illegible] l. ſi de poſſeſſ. C. ſi a non comp. jud.* (3.) An delegatus judex ſit ad certum tempus, [illegible] certum ſibi præſcriptum [illegible] terminum, necnon ad locum definitum *l. eum §. judicare ff. de [illegible] C. [illegible] eod.* (2.) inquirendi forma eſt, ut judex habeat merum imperium [illegible] poteſtatem [illegible], *[illegible] de juriſd.* (3.) ut inquirendus ſit ſub juriſdictione ejus, [illegible] vel reſpectu loci vel delicti, *c. ſi diligenti. ext. de for. comp. l. [illegible] C. [illegible] oportet.* (4.) ut præcedat fama, † quæ tacente querulante, vel [illegible] homine, quaſi deferat accuſatq; reum, *c. ad petitionem. [illegible] qualiter. c. cum [illegible] ext. de [illegible]* 3

autem vel quantam oporteat eſſe famam *part.* 1. & alibi prolixè diximus licet ſæpenumero etiam famâ ſilente, judex inquirat, occurrens ſcilicet ſcandalo,
4 quod † ut plurimum ex fama ſolet progerminare, *Aretin. in §. à tit. hæc* eſt quædam inquiſitio, *n.* 51. Cumprimis autem judex procedit [illegible] famâ ſilente, (1.) ſiquidem reus eſt præſens & nihil opponit contra generalem inquiſitionem, *c.* 2. *de accuſat.* (2.) ſi Fiſcalis contra univerſitatem vel Rectorem
5 provinciæ ejusq; officiales agit, *c.* 1. *de off. ord.* (3) cum judex † ex mero officio procedit & inquirit uti tenetur, *per d. c.* 1. (4.) quando ad denunciationem Fiſcalis agit, *Cephal. conſil.* 40. *Aretin d. loc. num.* 51. Prætereà ut ad propo-
6 ſitum redeam (5) requirit † inquiſitio, ut in ſcriptis fiat, non tantum ſuggerentis vel promoventis quàm ipſius judicis reſpectu, *Aretin. d. loc. n.* [illegible] *inquiſit. ſupra cap.* 3. *paſſim*, idq; eo fine & intentione, ut judex in actis qualiter ſpeculo præ oculis habeat quid coram ſeſe agatur, vel actum fuerit, & cum reus comparuerit, quaſi ex breviculo formare poſſit interrogationes, quibus ipſum examinet, vel ipſos teſtes ſuper inquiſitione receptas, quamquam non pauci tradant, primum examinandos eſſe reos & deinde inquirendum, quam practicam reprehendit jure, *Aretin. num.* 54. ibi: ſemper [illegible] inquiſitio & poſtea interrogatur. Neque tamen, quod obiter hîc annotandum reſtat, ex hac interrogatione & reſponſione inducitur litis conteſtatio, quam planè
7 neſcit † inquiſitionis proceſſus, niſi ubi in cauſa ardua & gravi læſæ Majeſtatis, proditionis, &c. lis vertitur, hæ quippe ſimilesq; cauſæ admittunt litis
8 † conteſtationem uti ex contrario ſenſu arguere licet *per Auth. ent. niſi breves, C. de ſent. ex peric. recitand.* ubi textus dicit in levioribus cauſis non neceſſariam eſſe litis conteſtationẽ, ſententia hæc Aretin. ſuggeſta eſt inde, quod ge-
9 neralis † inquiſitionis proceſſus non requirat litis conteſtationem, quia ſummarius eſt & merè executivus quoad capitulum, alias ſit non actu, potentia tamen & poteſtate juris eſt executivus *Gandin. in § quomodo de malef. cognoſc. per inquiſit. Boſſ. de inquiſit. d. loc.* At proceſſus ſummarius nullam litis conteſtationem admittit, *Gail.* 1. *obſ.* 6. *num.* 2. Ergo. Neque obſtat allegata authent. niſi breves, &c. quæ perperam adducitur ab Aretin. quia de civili non criminali cauſa vel themate loquitur, ubi verba textus ſuſpecti, evincunt, *vide Tiraquell. in ſingul. tract. de jud. ſuper rebus modic.* &c. Alias dubium non eſt, quin appellari poſſit inquiſitione nulliter & ſine forma [illegible], *l.* 2c. *ff d. qq. in fine Auguſtin. Ariminenſis in addit. ad Aretin. d. § hæc eſt quædam inquiſitio, num.* 57. (6.) Deſiderat proceſſus, ubi inſtigator agit, ſpecificationem ſive de-
10 monſtrationem † loci & temporis nempe ubi & quando delictum [illegible] commiſſum niſi verſemur in materia falſi vel hæreſeos, *Bald. in l.* 1. *C. qui accuſari*, &c. læſæ Majeſtatis divinæ, ubi omnes penè ſolemnitates poſſunt omitti, ſine vitio nullitatis, *Aretin. d. loc. nu.* [illegible] *c. qualiter c. quæ*[illegible]*, de purgat. canon.* ubi impropriè litis conteſtatio interrogatio judicis & reſponſio vel dicitur,

delicto

dicto loco hinc nonnulli ex noſtris anſam arripuêre, ut diſtinguerent inter litis † conteſtationem vel quam, *Aretin.d.loc.num.* 67. quaſi litis conteſtatio- 11
nem fieri hoc modo alleant Dd. ab Aretino citati non ſolennem veram & legitimam litis conteſtationem, quam non deſiderat proceſſus ſummarius, alii dicunt, ut ſiquidem [illegible] veritatem proceſſus inquiſitionis, remoto [illegible], lis omnino ſit conteſtanda, verba ſunt ſine ſenſu & textu [illegible], manet itaq; [illegible] regula, & irrefragabilis ſententia non neceſſariam eſſe [illegible] in loco litis conteſtationem, (7.) Requiritur
† citatio rei, *Sec.[illegible] de [illegible].nr. 20. quæſt.25. ſpec. de cit. Aretin. d.loc.* 12
quia citatio eſt janua judicii, quam quoq; ipſa cauſæ evidentia requirit, *Philipp.Port.* 1. *opin. com. concl.* 42. præſuppone autem hic inquiſitionem ſpecialem, qui initium proceſſus judiciorum præbet, generalis quippe inquiſitio acquieſcit in [illegible] jus dicentis, quæ eſt veſtibulum inquiſitionis ſpecialis, quin imò generalis inquiſitio ad informationem judicis vel curiæ potius [illegible] quam ut exinde fiat tranſitio ad quæſtionẽ, quæ quæſtio ad claſſem inquiſitionis ſpecialis ſpectat ſolummodò. & ubi ceſſat inquiſitio generalis, [illegible] incipit ſpecialis, quæ à citatione ſuum ſortitur exordium vel à captura, quia [illegible] hactenus acta & acutata non communicantur reo, ſed quæ novo hoc judicio inchoato allegata & probata ſunt, demum per copiam reo exhibentur, *vide Franciſc. Brun. de jud. & tort. pag.*11. Cæterùm ubi reus comparere noluerit vel, ſi evidens ſit ſuſpicio, eum latitaturum & quod plus dilapſurum, jam ad realem citationem meritò deproperet judex neceſſe eſt, cumprimis ſiquidem generalis inquiſitio dictaret ejuſmodi argumenta, quæ diffamationem omninò prægravent, ſicque informent animum judicantis ut illa ſa conſcientia ſuperſedere non poſſit, quia inquiſitione ſpeciali ſubſecutâ eaq; decenter formata quæſtioni & ſupplicio tandem ſubjuget reum, *Brun.d. loc. num.*11. ubi quæritur an teſtes examinati ſub generali inquiſitione faciant indicia, in proceſſu inquiſitionis ſpecialis? Quod negat. Mirari itaque ſubeo, ex priſcis patribus non paucos docuiſſe, ut primo loco quæratur de indiciis, ſecundo de citando vel capiendo reo, *Aretin. in d. § hæc eſt quædam.* certè ſi 13
latiſſimè indiciorum vocem acceptabis, ſubinde comprehendas neceſſe eſt, illa [illegible] & argumenta, quæ judex ſub inquiſitione generali annotavit, ſin [illegible] indicia dixeris, falſa eſt Aretini ſententia, quoniam indicia propriè ſic dicta [illegible] proceſſum ſpecialis inquiſitionis ſpectant, uti quoq; non aliter ac in proceſſu ordinario citantur & recipiuntur teſtes eorumq; dicta, *Dd. in l.*[illegible] *ff. de qq. Brun. d.loc.pag.* 11. (8.) quamquam litis conteſtationem ſolennem neſciat hic proceſſus, operæ pretium tamen eſt, ut interrogatio fiat & reſponſio rei ſuper actis & probationibus hujus inſtantiæ, ne causâ inauditâ, reo inaudito, quæſtioni ſubdatur innocens, quo neglecto ordine, reus appellare poterit ad ſuperiorem ex capite injuſtitiæ vel nullitatis, *Angel. Aretin.*

 d.loc.

d. loc. num 87. *Bald. in l.* 2. *C. de epiſc. audient. vide Gylman. in deciſ. Camer. il. tom.* 2. ubi præjudicia recenſet, quo pacto ex cauſa nullitatis devolvantur ad Cameram proceſſus criminales, vide prolixius hæc infra capite *de appellat.*

14 *cauſ. crimin. Gail.* 1. *obſ.* 1. (9.) Notandum eſt quod ubi † teſtes reprobantur in hoc judicio, ſic quoque judex ipſe recuſetur pro re nata, & quandoque in SCti Turpilliani notam incidat, *argum. l. ſenatus §. nam ad SCtum Turpill. Aretin. d. loc.* quod utplurimum obtinere dixerit, quando judex nulla fama præcedente temerè proceſſit, & quod turpius & intolerabilius eſt, quæſtioni emancipavit reos, & dein utrum deliquerint, inquiſivit, prout plures feciſſe imperitos præfectos ſcio, *Brun. d. loc.* ibi: ex quibus apparet, quod hodie malè faciunt officiales, qui antequam torment inquiſitos, & ex indi-

15 ciis habitis per dicta teſtium, ponunt quem ad torturam, & ſic † poſſent teneri ex ſyndicatu & confeſſio, quæ ſequeretur ex tali tortura non valeret etiamſi in ea perſeveraret, hæc ille. (10.) Denique non ſolum danda eſt copia indiciorum reo, ſed ejuſdem quoque recipienda purgatio, quæ an articulatim proponi poſſit & ad probandum admitti, quæſtionis eſt. Exiſtimo quod ſic:

16 quanquam enim hic proceſſus † ſummarius ſit, de quo exolare meritò debebat laxior judicii tela, *Aretin. d. loc. Brun. d. l. loc.* Dubium tamen eſt, quin pro conditione rei & circumſtantiis cauſæ ipſius, hac in parte judex ſit cautus & providus connivere debeat: ne obruatur innocens immaturitate indiciorum. Planè ſic comparata ſunt nonnulla indicia, ut quoque evacuentur ſine facto hominis, *Brun. d. loc.* ibi: Pone furtum eſt factum in loco, probant duo teſtes quod viderint de loco exire Martinum habentem aliquid ſub mantello, ſi iſte Martinus eſſet magnus mercator aut vir alicujus dignitatis & authoritatis quem non eſſet veriſimile furtum feciſſe, non poterit ex hoc torqueri, *Aretin. in addit. ad mall. malef. in gloſſ.* ſuper verbis: fama publica, &c. proinde

17 † *Brun. d. l. loc.* inducit aliquam limitationem ad regul. Quod teſtis de viſu deponens plenum faciat indicium, hactenus verum eſt, ſiquidem teſtis de ipſo maleficio recta deponit, ut quia dicit juratò, ſe vidiſſe cædem in Titio factam, ſe vidiſſe Titium contrectantem res alienas invito domino, illicita autem ſunt adſerere, aliquem exiiſſe de domo, in qua furtum factum eſt, eumq; nonnihil clam portaſſe, & deſtruere aliquem fractis foribus vel admotis ſcalis per feneſtram tranſcendiſſe in ædes alienas eumq; exinde deportaſſe res, quæ ſurreptæ dicuntur, in ſpecie illa adſertio, concurrente alio indicio quæſtionem parit, hæc indicium parit quæſtioni ſufficiens, tacentibus aliis indiciis, *vide part.* 1. *c.* 4.

CAPUT V.

DE REQUISITIONE ET REMISSIONE REORUM

SUMMARIA.

1. Rei ad locum commiſſi delicti remittendi ſunt.
2. Magiſtratus major, majorem [illegible] poteſt, ut [illegible] reum.
3. Cur [illegible] rei ad locum criminum.
4. Quando remiſſio peti & fieri debeat?
5. An [illegible] judex [illegible] cognitionem [illegible] exhibere [illegible]?
6. [illegible] requirere [illegible]?
7. [illegible] exhibere [illegible]?
8. [illegible]
9. [illegible]
10. [illegible]
11. [illegible] procedendum, [illegible] paſſus, [illegible] expediendus ſit?
12. Quid de criminibus [illegible] in diverſis territoriis degentibus, an ad unum judicem [illegible] remittendi, [illegible]?
13. Præventio quomodo in hoc [illegible] conſideranda?
14. Ratione adjuncti [illegible] reus ſortitur forum alienum competens?
15. An ſententia lata contra [illegible] criminis [illegible]?
16. [illegible] dependentia [illegible] non erat?
17. [illegible] duo judices contendunt, [illegible] eorum [illegible] at ſuper crimine?
18. [illegible] ſententiam [illegible]?

CONTINGIT ſæpenumero, ut rei delicti vel ſocii criminis in alieno conſiſtant territorio, vel dilapſi ex una provincia in aliam [illegible] commigrarunt 1 regionem, [illegible] loci, ubi commiſſum eſt crimen, ſolet requirere judicem vel præſidem provinciæ in qua latitat reus, vel ubi alias ſuum habet domicilium, l. 1. C. ubi de crim. agi oport. quæſtione eorum criminum, quæ legibus aut extra ordinem coercentur, ubi commiſſa vel inchoata ſunt, vel ubi reperiuntur, qui rei eſſe perhibentur criminis, perfici debere, ſatis notum eſt, text. d. l. 1. & [illegible] ibidem, quam [illegible] provincia, [illegible] c. add. l. 7. §. penult. [illegible] de accuſat. ſunt textus clariſſimi de remittendo reo in provinciam, ubi deliquit, [illegible] ſiquidem judex domicilii vel provinciæ in qua latitat † reus, ex- 2 hibere [illegible], a ſuperiori ſubinde implorato, coercere poſſit, ut ad [illegible] judicis remittat reum, [illegible] ne delicta maneant impunita, l. [illegible]. Cod. de exhib. [illegible], cum potius in hiſce locis ubi graſſati ſunt malefactores puniantur, & ut [illegible] deterreantur [illegible], & ſolatium [illegible] cognatis & affinibus interemptorum, eodem loco pœna [illegible] quo [illegible] 3 rei deliquerunt, l. 28. § penult. ff. de pœn. Poteſt hæc requiſitio fieri [illegible] abſoluto judicio, quam ab initio [illegible] de crimine, [illegible] Alex. [illegible] 4 ff. d.

ff. de re judicat. niſi judex domicilii allegaret præventi[illegible]nem, quâ in parte ad huc tenetur hic judex mittere reum ſcilicet ut executio fiat in loco commiſſi criminis, *Alex. d. loc. col. 2. verſ. & ſic erit concluſio, &c* Quæri hic ſolet, utrum judex domicilii reſcribere poſſit requirenti, cogniturum ſeſe de delicto prius-
5 quam remittat? Reſpond. ſaltem cognoſcere poſſe hunc judicem [illegible] ſumma-rie de delicto, vel de contumacia rei *Bald. in d. l. 1. C. ubi de crim.* [illegible] *in element. paſtoralis de re jud.* neq; enim requiſitum confeſſim [illegible] appetitus requirentium in juſtos, *Ægid. Boſſ. de for. comp. num.* [illegible] quoties repetit injuſte requiſitos reos, denegare poteſt exhibitionem, *Cæ*[illegible] *ſil. 58.* Sciendum autem eſt hoc in loco exhibitionem non niſi à magiſtratu ordinario rei eſſe poſtulandum, qui enim ſubditò emigravit e[illegible]
6 ci vel † inquiſitionis cauſa per ſubſidiales revocatur, quibus ſi indulgens tergiverſatur prætor provinciæ, judex omnium ſuperior implorari poteſt, ut coerceat defenſorem maleficorum, mandetq; ſine clauſula [illegible]
7 mittat reum, quo in caſu indicia contra reum exorta e[illegible] generalia † tranſ-mittere & communicare debet ſuperiori, cautela hæc eſt pro c[illegible]ione cauſæ expeditione; alias ſufficeret qualis qualis demonſtratio in[illegible], & reverſa-lium tranſmiſſio. Sed quid ſi præfecti ejuſdem territorii [illegible] delinquen-tes revocentq; malefactores ex illo diſtrictu in quo jam com[illegible]tur reus, vel
8 ubi domicilium habet, videtur poſtulationem ejuſmodi im[illegible] † requiſiti o-nis nomen ſortiri. Ergò nec remiſſio, à quo enim removetur nomen [illegible], ab illo quoque ipſa nominis denotatio vel res ipſa, *c. Forus, de V. S. Eberh. in top. in loc. ab etymolog.* ratio antecedentis eſt, quia remiſſio non niſi ad magiſtra-tum diverſæ provinciæ dirigitur. per ſupra notata [illegible] 2. ubi nullum periculum eſt violandæ vel offendendæ juriſdictionis alterius, ibi neceſſaria non eſt re-quiſitio. Iſte enim eſt finis & ſcopus requiſitionis & reverſalium exactorum ne imperium merum inde patiatur jacturam vel criminoſi evadant impuniti, *B*[illegible] *d. loc. num. 51. & ſeqq.* At ſuſpicio ejuſmodi non ſubit pares, eoſdemq; do-mini unius officiales. Ergò. Quocirca ad nudam poſtulationem & [illegible]n-c[illegible]tionem, præfectus loci ubi delituit reus, remittere non dubitabit, niſi [illegible]œ-piſſet hic cognoſcere prius de delicto ſcilicet ex capite præventionis lege, *c. propoſuit & e*[illegible] *d. for. comp.* Sed quid ſi reus in uno territorio cœpit, at in al-tero [illegible] facinus ſuum? ut [illegible] fur contrectavit rem in uno loco, detulit vero ad alium vel mandavit Titius cædem in uno, homicida in alio territorio occidit hominem? *vide Boſſ d. loc. pag.* 68. Porrò, an judex
9 domicilii e[illegible]equi teneatur ſententiam in alio territorio † [illegible]m, ſiquidem con-tentione ſuper remiſſione exorta, ille præſentare noluerit reum? R[illegible] quæritur de diverſis dominiis vel præfecturis non territoriis, ubi delictum commiſſum proponitur, ſi ſub uno dominatu alicujus principis [illegible] de-liquit & degit, res eſt expedita, ſin in diverſo territorio deliquit, quam [illegible]m

vivit,

vivit, judex alterius provinciæ non niſi viſis & examinatis actis cognoſcere & punire debet reum. *Paſſ. d. loc. num.* [illegible] ibi [illegible] de proceſſu, quia in re quoque reverſales dari invicem [illegible] præcipitum eſt, ne videlicet judex alter alterius territorii ad nudam [illegible], literæ [illegible] inter alias clauſulas continere talem proviſionem. Quod ſcilicet [illegible] pari officio ſi qui caſus ſeſe offerat, ſincere & recompenſare [illegible] hoc ju- ſtitiæ vel executionis, uti communiter [illegible] literæ reverſales [illegible] lent, nempe paratum eſſe requirentem, eandem referre [illegible] offerentis, ſi eſt ſi contingat in ſua ditione latitaturum ſubditum, [illegible] ſeſe perinde cum illere requirenti, &c. Alias, ut ad rem redeam, [illegible] execu- 11 tione rei judicatæ per literas compaſſus exequendæ, judex prudens ſolet citare reum, & ſi quas habet exceptiones ſolidas, planas & in [illegible] proba- biles contra rem judicatam, eas admittere etiam in cauſa [illegible] *Castr. conſil.* [illegible] ubi decidit, quod [illegible] merita cauſæ etiam [illegible] co- gnoſcere poſſit, nec non quoad nullitates quantumvis ipſe Papa commiſiſſe- ret executionem officiali, vel imploraret brachium ſeculare, *c. de cætero, de re judic. Felin.* [illegible] *c. cum ſit generale, ext. de for. compet.* Iubet adſcribere verba [illegible] ſii pro majori declaratione hujus regulæ, ibi cu citatio poſſit fieri ſaltem q[illegible] ad effectum, de quo quod à præfato ſenatu petitâ executione brachii ſecularis imploratâ à judicibus Eccleſiaſticis, ſenatus ipſe juſſerit citari partem & adeò iratus fuit, quod ſibi tanquam denegata juſtitia fuerit, conceſſerat repreſſa- lias contra mercatores Mediolanenſes, & licet facta fuiſſet ingens inſtantia & per ipſos mercatores & per legatum Cæſaris, & oſtenſum clare Pontifici, quod non denegabatur juſtitia attamen perſeveravit in repreſſaliis, imo mi- natus eſt, velle alias iterare pro pleniori ſatisfactione ſummæ contētæ in ſen- tentiis de quibus in illo brachio ſeculari, quæ res eſt miranda hactenus *Boſſ. d. loc. n.* 89. Supra diximus de mandatore & mandatorio quomodo cōveniendi eſſent, reſtat ut quæramus † de ſociis criminis, ſiquidem ſub territoriis di- 12 verſis exiſtant? Sane continentia cauſæ, ſuo jure quaſi exigit, ut ſub eodem conveniantur judice complices, non tam propter confrontationem quam convenientia alia, quæ infert & exhibet cauſarum connexio in eodem judi- cio deducta, computantur quippe [illegible], & ne diverſæ ſententiæ in judiciis diverſis ferantur præcavetur. † Præventio autem hoc in loco id 13 præſtat, ut vel dignitas ipſius [illegible], vel præventio abſolute conſiderata, excludat cognitione alterius: Eminentia [illegible] ut cum ſuperior, etſi præve- nerit inferior judex, cœpit quoque [illegible] vel præventio abſolutè ſic dicta, ad regulam juris communis ſpectat, juxta illud qui prior tempore potior jure eſt, quæ maxima in materia præventionis quoque [illegible]. Cæte- rum ubi ſocii extiterunt criminis, partim clerici, partim laici, univerſi de- linquentes ſequuntur forum clerici utpote dignioris, *Dec.* [illegible] *l. ſi* [illegible]

D C.de

C. de col. bon. Boſſ. d. loc. num. [illegible] facit hic vulgata regula: quod ſæpè quis ex per-
14 ſona alterius [illegible] conſequatur quod per ſeſe non habebat, & quod ratione †
adjuncti in individuis aliquis ſortiatur forum alias incompetens, *Bart. in l. præcipimus, §. eodem, C. de app.* quæ regulam in civilibus quoq; ſtringit, ſiquidem enim obligati ſint Titio duo ex eadem cauſa, ambo coram digniori vel
15 ſuperiori ſuo conveniendi, *Bart. d. loc.* Et quanquam ſententia † [illegible] contra ſocium criminis lata non præjudicet conſorti, *l. fundi, l. fundum, [illegible] ac except. Bart. in l. edicta. C. de e[illegible]d. vide Quertam conſil. 5. ubi adſerit* quod ſententia inter diverſos lata pariat quale quale præjudicium conſorti, &c. *a[illegible], l. a ſententia, ff. de appellat.* Satis tamen inpræſentiarum eſt, quod diverſæ ſententiæ in cauſa eadem ferri jure non poſſint nec debeant ſuper eodem facto, per ſu-
16 pra deducta hinc vulgò quoq; dicimus: Quod reſpectu † [illegible] dependentiæ, ille efficiatur judex, qui alias erat incompetens, *Felin. in c. ſuper literis, ext. de reſcript.* ſic judex cauſarum civilium ratione adjuncti de furto cognoſcit condemnando illum in pœnam & reſtitutionem furti *l. inter [illegible] §. qui furem, ubi Bart. ff. de furt. porro per l. qui de crimine. C. de accuſat.* probatur evidenter quod in delictis pluribus ex unico facto deſcendentibus, [illegible] judex, ratio eſt, quia cauſa individua ſeparari non poteſt, individua cauſa autem dicitur ratione ejuſdem facti, *d. l. qui de crimine.*

17 Aliàs quando duo † judices contendunt, cujus ſit juriſdictio vel cognitio ſuper aliquo crimine, ambo judicabunt, *c. cum contingat. & c. poſtremo. ext. de reſcript.* non aliter ac ſi delictum commiſſum ſit in confinibus, [illegible] cauſam ambo judicant, *l. jure peritos, §. cum oriundi. ff. de excuſat. tut.* quod ſi diverſi
18 judices † cum diverſas & repugnantes dictitant ſententias, illa [illegible] & prædominans ſit ſententia, quæ [illegible] mitiorem profert, ſapienti [illegible] conſilio, ut ICtus *in l. [illegible] 8. ff. de [illegible]* quæ prav[illegible] et benignius reſponſum nonnulli exiſtimant, quod uterque [illegible] punire poſſit, *vide Aretin. d. lo[illegible] tit.* nec [illegible] de [illegible] &c. Quæ ſententia non immeritò dura videtur, *Ar[illegible] in not. ad Aretin. in §. [illegible] in hac materia, &c. [illegible] Bald. [illegible] præ[illegible]* Quod licet [illegible] ſit commiſſum in confinibus ditarum [illegible] utraque quidem teneatur, ſed ſi una ſola ſolvat altera liberatur, ſic maleficio commiſſo in confinibus denunciatoribus conſtitutis, uterq; denunciare tenetur, *Aretinenſis dicto loco.*

CAPUT VI.

DE SECVRITATE ET SALVO CONDVCTV.

SUMMARIA.

1. *Salvus conductus dari debet [illegible] cognita.*

2. *Formula ſalvi conductus.*

3. *Salvus conductus ſemel datus de facto retractari [illegible] debet.*

4. *Re[illegible] ſas [illegible] excipiente, tamen adverſus [illegible] ſalvus conductus ei ſervari debet.*

5. *[illegible] locum judicii comprehendi [illegible].*

6. *Salvus conductus praſtat ſecuritatem non tamen in loco [illegible] in loco delicti commiſſi.*

7. *Principis [illegible].*

8. *A[illegible] ſalvum conductum ipſo jure [illegible] ſunt.*

9. *Iudex inferior procedens adversus ſalvũ conductum [illegible] convenire poteſt.*

10. *[illegible] reus [illegible] ter, seu dederit [illegible] conceſſo ſibi [illegible] juridicos [illegible] poteſt atq. poſtea [illegible] innocentiam ſuam de[illegible].*

11. *Impedimentum avertibile nunquam excuſat.*

12. *Qualibet citatio in cauſa criminali ſalvum conductum praeſefert.*

13. *Salvus conductus an extendatur ad [illegible] rei & familiam [illegible].*

14. *Salvus conductus [illegible] proximum [illegible] & [illegible] diſcretionale [illegible].*

15. *[illegible] quentes [illegible] currentes [illegible] circa [illegible] inferioris, [illegible] conſequuntur?*

16. *Principum ſtatuæ jus aſylorum habere creduntur.*

17. *Principes provinciales jura ſuperioritatis exercent in ſuis ditionibus.*

18. *De poteſtate principis diſputare, [illegible] gium eſt.*

19. *Princeps major eſt conſuetudine & lege mortua.*

20. *Favore defenſionis reorum multa extra ordinem recepta ſunt.*

21. *Introductio [illegible] quæritur, interceſſione [illegible] ſungitur.*

22. *D[illegible] introductor ſit magiſtratus competens introducti necne?*

23. *Interceſſio principis e[illegible] loco [illegible].*

24. *Ma[illegible]orum preces mandatum inferunt.*

25. *Papæ verbum, rogo, vim præcepti habet.*

26. *Locus Suetonii de Auguſto relatus.*

27. *D[illegible] proæretica privilegiorum [illegible].*

28. *[illegible] quod [illegible] expectet.*

29. *Manifeſtus delicti atrocioris reus a privato occidi poteſt.*

30. *Actor in ſupplementum probationis jurare poteſt contra manifeſtum delicti atrocioris reum.*

31. *Advocatus denegatur etiam ejuſmodi reo.*

32. *Appellationi non deferetur in caſu atrocioris delicti.*

33. *Torqueri poteſt in diebus paſchalibus [illegible] except[illegible].*

34. *Iniqua conſuetudo Iudæorum per quam [illegible] petere veniam manifeſti delinquentis.*

35. *Explicatio [illegible] ſubjungitur.*

36. *Bart[illegible] verba Iudæorum [illegible].*

37. *[illegible] Capitol[illegible] tur.*

38. *[illegible] Tiberii in artificem quendam egregium.*

39. *Iudicium Tiraquelli hac de re [illegible] tur.*

40. *[illegible] bjicitur [illegible] L. diffamari. C. de ingen.*

1 DE ſalvo conductu dicere etiam † operæ precium eſt, quem pro conditione rei & qualitate delicti, cauſa cognita, magiſtratus decernere ſolet, *Bart. in l.3. Cod. de cuſt. & exhib. reor.* qua in parte & prius quam datur ſecuritas, neceſſe eſt ut reus cautionem præſtet de judicio iſti uſque ad terminationem cauſæ: & ſententiam definitivam *Coler. deciſ. 165. Dan. M[illegible] 2. ſen. c. 1.* atque hic ſalvus conductus eodem ſignificatu denominatur ſecuritas, gratia, privilegium, *Johan. Petr. Surd. conſil. 270. lib. 2.* Qui quidem ſub publico ju-

2 dicii ſigillo publicari ſolet, hac formula: † Daß angeklager noch zur Zeit für vngehorſamb nicht zu achten, es wird jhm aber auff vngebenden Cautien, daß er des Rechten jederzeit außwarten dulden vnnd leiden wolle, was jhm zu Recht zuerkandt ſeinem begern nach ein frey ſicher Geleidt für recht vnd für vnrechter Gewalt, ſolang biß etwas Peinliches wider jhn erkandt, völlig mitgetheilet, vnd er iſt alsdann auff alle vnd jede Gerichte Perſönlich zuerſcheinen, auff die Anklage ſich einzulaſſen, vnd ſonſten gebührlich zu Antworten ſchuldig, vnnd wird das Zetergeſchrey noch zur Zeit eingeſtelt von Rechts wegen.

Cæterùm conceſſo hoc ſalvo conductu, ſecurè ad judicii locum venire

3 & ibi jus ſuum deducere reus poteſt, cum ſalvus † conductus ſemel datus ſervari debeat, & ſine cauſa legitima minimè revocari, *Novel. 17. cap. 6. ubi Cujac. in expoſ. Jaſ. in l. 2. §. ſi quis num. ff. ſi quis num. [illegible] ſi quis caut. Modeſt. Piſtor. conſ. 49. vol. 2. Menoch. conſil. 100. vol. 1. vide Boſſ. de examin. reor. n. 2[illegible].* [illegible] meminit exploratoris ab utroq; tam eo, quem prodere intendebat, quam hoc, cui conſilia hoſtis manifeſtare voluit, nō habentis, ſalvum conductum captus hic a milite gallico, dixit ſe dolo bono uti hac cautela, quæ excuſatio ea ratione fuit admiſſa a Lotrecho vices Regis gerente, nolente revocare ſalvum conductum, &c. in hæc verba ſeſe diſtingente: Contentus ſum hunc liberari: qui convenit ut bonus explorator ſit proditor utriuſq;, hæc *Boſſ. d. loc.* Sed

4 quid ſi reus fateretur † delictum, excipit tamen adverſus accuſatoris intentionem. Reſp. Adhuc ei prodeſſe debere ſalvum conductum [illegible], dum de exceptione pronuncietur, & pronunciatum effectum [illegible] ſortiatur. Qui enim confitetur homicidium ſe feciſſe verum ad defenſionem ſui, plena jure pro confeſſo & judicato haberi non debet, licet juris præſumptio [illegible] *argum. l. 1. §. 1[illegible]. ff. d[illegible] bald [illegible] & 2[illegible] C. de con-*

5 *[illegible]* plane conceſſo & obtento ſalvo † conductu, ſecuritas data intelligitur, [illegible] ſecurè recedere poſſit reus, quam tutò ad judicium acceſſit, *Felin. in c. [illegible] de treuga & pace, Decian. conſil. 18. num. 4[illegible]. vol. 1. Coler. de [illegible] dec. 1[illegible].* [illegible]

6 tione † præſtitâ de qua paulo ante dixi, poteſtatem conſequitur reus [illegible] etiam in loco ubi deliquit, [illegible] ibi quoniam [illegible]

7 quod principis † vel vice [illegible] eficium [illegible] explicari [illegible] *de co[illegible]* [illegible] uſque dum proceſſus hæret, [illegible] bi-

vis

vis ſecurus eſſe debeat, ne ab authoritate principali decipiatur, ut † proinde 8
attentata omnia a judice indiſcreto commiſſa, ipſo jure ſint nulla, data ſiqui-
dem ei eſt, ut paulo ante meminimus plena ſecuritas ſub conditione hac: Biß er
es Peinliches wider ihn erkandt / qua igitur ſecuritate pendente nihil inno-
vari debet in tantum, ut contra judicem † adverſus fidem datam proceden- 9
tem, injuriarum agi poſſit, *Mod. Piſtor. conſil. 49. nu. 29. vol. 2. Proinde Boſ.
in tit de citat. num.* 58. hanc cautelam pro reo tradit, ut faciat ſalvum condu-
ctum publico diplomate affigi, præſertim ſi proſcriptus & in bannum eſt de-
claratus, ne ſubinde offendatur, etenim hoc pacto nemo ignorantiam præ-
tendere poteſt.

Dico cautione præſtita ab accuſato hoc demum obtinere, quod hanc
ſententiam habet, ut ex adverſo eidem non præſtita ſufficienti determinata
ſecuritas concedi plerumque ſoleat zu einem jeglichen Gericht ſicher ab vnd
zuzuziehen, proinde ſi extra ſalvum juridicum inveniatur reus in loco judicii, in
† carcerem detrudi debet: ex quo jam reſpondere cogitur & eventum litis
ibidem expectare. Neq; hic excipere poteſt contra ſalvum conductum quaſi
ſi is nimium coarctatus & limitatus ſit. Etenim potuiſſet vel cautionem præ-
ſtare fortiorem vel ſalvum conductum clauſulis ſalutarioribus & potentiori-
bus ſibi dari curare, quod cum neglexit, imputabit ſibi periculum inde na-
ſcens per regulam quod † impedimentum avertibile nunquam excuſet, *l. 26.* 11
§. 1. ff. quib. ex cauſ. maj. l. 4. ff. de condi. & demonſt. Dec. conſil. 18. *n.* 145. *vol. 1.*
Menoch. de conſil. ... Ang. de except. cap. 5. num. 27. Hoc notandum:
quamlibet citationem in cauſa criminali, ut ut maxime annexam non habeat
clauſulam publicæ fidei vel ſecuritatis, ejus † effectus eſſe, ut quaſi in dorſo 12
ſecum afferat ſalvum conductum Daß ſie ein Geleibe mit ſich auff dem Ru-
cken trage *Coler. de de ... 65. in fin.* Quod ipſum tamen in criminibus atrocioribus,
ut criminis læſæ Majeſtatis, hæreſeos, Sodomiæ, latrocinii, rapinæ, adulterii
falſi cæterorumque delictorum exceptorum, quæ pœnam corporalem imò
mortem naturalem inferunt non obtinere exiſtimamus.

Denique qui ſecuritatem judex concedit, eam non ſolum in ſuo terri-
torio, ſed & in altero ſervare debet, *Mode. Piſtor. conſil. 49. volum. 2. ubi dicit:*
Der jenige ſo das Geleidt gibt / iſt daſſelbig nicht allein in ſeinem Gebiete / Land
vnd Fürſtenthumb / oder in den Gerichten da er dann Geleidt zugeſagt vnd ge-
geben / ſondern auch anderswo zu halten ſchuldig.

Quæri ſolet an ſalvus conductus reo datus, † extendatur ad uxorem 13
& familiam ejus? quod affirmant *Schurff. conſil.* ... 2.

Quoad proceſſum legitimè fundandum, ſalvo conductu decreto, ob-
ſervabis † reum oportere (quod proximum eſt & tutiſſimum) producere 14
ſuos articulos defenſionales, eoſq; qua par, induſtria probare ad accuſatoris
inſtantiam, quod incuria quadam non obſcuri practicorum memini. Porrò

 &hoc

& hoc quæſtione dignum eſt, an conſuetudo toleranda ſit in urbibus quibuſ-
15 dam Saxoniæ recepta, ut † ſi ad latus vel currum Regis vel principis ali-
cujus, maleficus, dum ille civitatem ingreditur, ſe ſiſtit, eaque cum pompa
pe [illegible], unde exul erat propter delictum commiſſum, introeat, ſecuritatem
vel pœnæ remiſſionem jure obtinere debeat? R. Etſi dubium non eſt
16 [illegible] principum † ſtatuas aſylorum loco fuiſſe Romanis, §. [illegible] *de iis,
qui ſunt ſui vel alieni juris*, [illegible] cognoſce de quæreliis eorum, qui [illegible] Ju-
lii Sabini ad ſtatuam confugerunt, &c. qua de re in noſtris diſputat [illegible]s
ad *inſt. d.* [illegible]. 2. adeo ut ex aſſe ſecurior videatur eſſe reus. Siquidem ad latus
ipſius principis proprium confugiat, *argum. d. §. 2.* (2.) nec ob [illegible] cum
17 principes † provinciales jura ſuperioritatis vel regalia [illegible] etiam, prout
ipſa præſcriptione vel ſingulari indultu acquiſivêre, ut ſuis dominibus uſur-
18 pantes conſuetudine hanc licentiam ſibi adſciſcunt, ut de ipſorum † pote-
ſtate diſputare quodammodo ſit ſacrilegium, *Bart. in l. [illegible], num. 14. ff. de
prob. jud.* ubi adſerit ducem & comitem Imperii ſtatuere poſſe in ſuo ter-
ritorio, quod Princeps Romanus in orbe imperii, *Gail. d. pp. lib. 1. &* [illegible] *num. 9.*
conſuetudinem ejuſmodi retinendam eſſe dicit non tam, 1. quod Princeps
19 † major ſit conſuetudine & lege mortua, ut *ait Matth. de Afflict. d. c. Neap.*
20 *305. num. 17.* (2.) Quam quod favore † defenſionis ſeu liberationis reorum
plurima extra ordinem recepta ſint, *Dec. conſil. 4*[illegible]*6. Alex. conſil. 24. n. 39. vol. 2.
Maſ. de prob. concl. 905. volum. 2. gloſſ. in l. 1 C. de Sicar Cravet. conſil. 119. nu. 9.*
Sed utut hæc traduntur, non tamen ἀπλῶς verificari poſſe jure videtur. Di-
ſtinguendum itaq; inter leviora, culpa non dolo commiſſa crimina, & delicta
nefanda & excepta cum proaireſi delinquendi perpetrata. Illa ut olim aſyla
merebantur etiam conſtitutione ſacra, *ut num. 35. Deut. 19. Joſ. 20.* ita & nunc
21 † remitti poſſunt propter introductionem illã, quæ interceſſionis vice vide-
tur fungi, *gl. in c. dixit dominus 14. q. 5. & in l. quod princ. ff. de aqua & aq. pluv.
arcend. ibi:* authoritas majoris excuſat in illicitis, *Tiraquell. de pœn. cauſ. 34. n. 5.*
22 Quin imò introductor † remittere videtur pœnam reo ſiquidem ejuſdem eſt
[illegible] *Bart. conſil. 1. lib. 1. Felin. in c. 1. de conſt. c. cùm ſe ve* [illegible] *ex quib. cauſ.
in* [illegible] *irrog.* ubi aſſerunt principem remittere poſſe pœnam, quam ſtatutum
23 etiam juratum [illegible]. Si in extraneus eſt, interceſſio † principis ſuum etiam
[illegible] effectum [illegible] juſſus inſtar eſt, etſi competens non eſt magiſtratus,
[illegible] *l. unica. C. ſi rector provinciæ, & c. 1. de off. deleg.* quo-
24 niam & † majorum ſaltem preces pro juſſu ſint, *Bald. in l. ſi mandator, C. quod
25 cum eo*, [illegible] *& in c. beatus in 7 quæſt. 1. C.* [illegible] *11. q. 3.* ubi Papæ † verbum rogo:
vim præcepti habet, unde illud Auſonii:

Scribere me Auguſtus jubet & mea carmina poſcit
Pene rogans blando vis latet imperio.

26 Auguſtus Imperator † diuturnorum [illegible] ex [illegible] manibus ni-
hil

hi aliud, quam voluptas inimicis quæreretur, non videatur rem condere, ut si
quem quis repetere vellet, per periculum pœnæ incideret, *Suet. in vita
Augusti.c* 32. Cæterum delicta atrociora † & excepta per introductionem 27
ejusmodi remissi non debere recta juris ratio, nec vigor disciplinæ publicæ
unquam pati vel admittere potest, cum quod jus asylorum delicta prodiret
ca non complectatur dicto, *c. num.* 35. *Deut.* 19. quam quod ipsa omni jure et-
iam divino, cui subest princeps, exosa & abominanda sint, homicida † enim 28
quod fecit exspectet, *Dd. in l.* 3. *C. de Episc. aud. ubi textus*, ait, turbari lætitias
& gaudia hominum, quoties dimittantur impuniti criminosi, adeo ut mani-
festus † delicti immanioris reus à privato occidi queat, *l.* 2. *C quand.* 29
unic. sine jud. se vind. &c. Tiraquell. de pœn. caus. 49. *num.* 32. contra quem
actor † in supplementum probationis jurare potest, *l si quando, C. unde vi*, 30
Tiraquell. de loc. n. 41. cui Advocatus † & defensor denegatur, *l. per omnes*, 31
C. de def. civ. Bart. consil. 46. *lib.* 1. ubi dicit se audivisse illum textum allegari
adversus usurarium ne advocato uteretur in Rota romana, cujus etiam † 32
appellationi non defertur, *l. si quis filio § si autem omnes, ff. de inoff. test. Bald. in
l.* 1. *in fine de jur. calum. Tiraquell. de pœn. caus.* 49. *num.* 21. qui diebus † etiam 33
paschalibus potest torqueri, *l. nemo. Cod de episc. aud ubi Bart. subdit.* quod
princeps immanioris delicti reos nedum illo tempore sacro possit relaxare
carceribus in honorem & reverentiam festi, &c.

Iniqua † itaque fuit & jure damnanda consuetudo qua licuit turbæ, 34
postulare in festo quemcunque maleficum, ut dimitteretur a præside provin-
ciæ impunitus, ut factum est tempore passionis Jesu Christi, ubi Barrabas,
insignis ille latro, ad clamorem populi veniam delicti impetravit. Etsi Georg.
Major & interpp. docent in illius loci explicatione, † quod consuetudo hæc 35
ideo fuerit introducta, ut esset commonefactio de dimissione & liberatione
populi Judaici ex Ægypto, ut pro hac gratias agerent Deo, sicuti eo nomine
totum festum divinitus institutum sit & *Cyrill. h. oc loc.* cum ait qui ab æquali-
tate patris ad paupertatem nostram descendit, ut nos a vero homicida diabo-
lo liberaret, Judæorum sacerdotes & scribæ postposuerunt, & infamem la-
tronem postularunt, & quasi unquam illud audissent justum judicium ju-
dicate &c. ubi videtur Cyrillus ipse consuetudinem illam iniquitatis arguere
quam *Bart. in l. quis eadem ff. ad L. Cornel.* reprehendere videtur, † dum scri- 36
bit propter clamorem populi, timorem seditionis adeoque imminens scan-
dalum publicum, nemo debeat condemnari ad mortem, *l. decurionum, C de
pœn. caus.* 46. *nu.* 2. adeo ut licet sit vir strenuus insignis artifex quibus sæpe-
numero pœnæ remittuntur præsertim ad intercessiones reipub. virorũ prin-
cipum, ut quotidie fieri constet, dimittendus non sit siquidem is insignis sit
maleficus, latro manifestus, seditiosus, factiosus, *l. filio. §. hi autem. ff. de inof.
rupt. test.* hinc Manlius † capitolinus vir admodum strenuus, qui etsi 16. an- 37
norum

ubi graſſati ſunt, furca puniendos compluribus placuit, ut & conſpectu deterreantur alii ab ejuſdem facinoribus, & ſolatio ſit cognatis & affinibus interemptorum eodem loco pœna reddita, in quo latrones homicidia feciſſent. Hæc ille. *Adde auth. ut nulli jud liceat. § ſi quis vero.*

3. Præterea vulgò traditum eſt, quòd ſalvus conductus tanquam legis & imperii præſidium, paſſim & ſine diſcrimine noxæ concedi non debeat. Neque enim delinquentibus ſubſidia ſua ſe tribuunt, *l. 26. §. 6. ff. ex quib. cauſ. major. l. 2. §. 3. ff. ad SCtum Velle j. Zoann. de Rom. Imp. num.* 86. imò immunitatem eis uſquequo denegant. *l. 18. §. 1. ff. de jud. l. 51. §. fin. ff. ad L. Aquil. l. 31. ff. depoſ. l. 9. §. 5. ff. de pub. jud. l. 20. ff. de pœn.* Scilicet qui ad pœnas, delinquendo ſeſe adſtringunt, *l. 20. ff. de jud. l. 34. ff. de jur. fiſc. Matth. Col. de proc. exec. p. 4. c. 1. num.* 204. ubi dicit: Quod imperii ſtatus, qui ſalvum conductum dare atque concedere poſſint, abuti hac conceſſione non debeant, ſed inquirere potius in diffamatas & ſuſpectas, ut provincia ſua malis hominibus purgetur, *l. 3. ff. de off. præſ.* turbantur lætitiæ & gaudia hominum, quoties criminoſi dimittuntur impuniti, ait *l. 3. C. de Epiſc. audient*

4. Accedit huc, & corroborat hanc ſententiam *l. 5 ff. de publ. jud.* Si, inquit Ulpian. reus factus eſt, purgari ſe debet, nec ante poteſt accuſare, quàm fuerit excuſatus, &c. Adeò ut non pauci ex noſtris, ſtatuere non dubitârint, quin, quoties ſalvus conductus immeritò conceſſus ſit, revocari vel ſervari non debeat, ut videre eſt apud *Parid. de Put. in tr. ſynd. in verb. ſalv. cond. Nell. in tr. de bannit. p. 2. quæſt. 15. Quint. Mandoſ. in tr. de ſignat. in prim. com.* ubi dicunt, quod fidantia vel ſecuritas reis, qui etiam ſuſpecti ſaltem & notati ſunt, data ſeu promiſſa, licitè ſervanda non ſit. *Et teſtatur Boer. deciſ.* 179. Quod in Hiſpania rarò vel nunquam ſalvus conductus concedatur, conceſſus perrarò ſervetur.

5. Quanto magis hoc ipſum jure obtinebit. Quoties delictum in territorio alterius judicis commiſſum proponatur, atque judex, in cujus ditionem ſe recepit reus, requiſitus delinquentem expellere, vel quod minus tradere magiſtratui ſub quo deliquit, reum, recuſat, idemque non tam delinquentem non expellit, quam ei ſecuritatem dando, homicidam, nulla hoſpitalitate dignum fovet, recipit, & tuetur *Dd. in l. 1. & 2 ff. de recept.* Ut ſic dicendum, ſalvum conductum hoc caſu conceſſum nullius penè momenti exiſtere, quippe qui ut ſupra etiam factum, præſidium innocentiæ non noxæ eſſe debet, *arg. l ad beſtias §. ex provincia, ff. de pœn.*

6. Facit, quod ſalvus conductus ei, qui in territorio degit, à judice territorii concedi minimè debeat, *Salyc. in l cum indulgentia, nu.* 4. *C. de ſent. poſſ. Par. de Put. d. tr. in verb. ſalv. cond. c. 1. Menoch. de arb. jud. lib. 1. quæſt. 81. Farinac. lib. 1. tit. 4. quæſt. 28. num. 96.* Ubi adſerunt (1.) quod licet ſecundum nonnullos, ſalvus conductus illegitime conceſſus revocari non debeat, cum

tur non ſecus, uti deformes mulieres, ementito falſoq; colore ſucle tinctæ. Sæpe numero formoſis puellis adnumerantur, *ex Ariſt. refert Vent. de Val. in parth. litig. lib. 1. c. 10.*

Ut igitur veritatem è puteo, ut loquuntur, eruam: Conſiderandum

1. Quod nedum Imperator, ſed omnes alii principes inferiores ſalvum conductum concedere poſſint, præſertim ſi in loco, ubi ſecuritatem pollicentur, jura imperii exerceat, *Menoch conſil. 100. n. 166. lib. 1. Bart. in l. relegati, num. 4. ff. de pœn.* ubi dicit: Quod principes vel civitates ſuperiorem recognoſcentes ſalvum conductum concedere poſſint, modo habeant jus & authoritatem ſtatuta condendi.

2. Quod ipſum ſine dubio accipiendum, *ait Roland. a Valle conſil. 4. num. 39. volum. 3.* de ducibus Marchionibus comitibus, quibus conceſſum eſt merum & mixtum imperium, omnimoda juriſdictio & perpetua adminiſtratio, quoniam tales ſic inveſtiti reputentur in ſuis territoriis pro principe ſuperiore, ſcilicet qui poſſunt ea omnia præſtare & expedire in ſuis provinciis, quæ Imperator in Imperio Romano, *Oſaſc decis. Ped. 139. n. 5* Quod ipſum de Baronibus, aliisq; imperii ſtatibus verificari non dubitat, *Proſp. Farin. lib. 1. tit. 4. q. 29. in fine.*

3. Atque ſic ex hiſce modo conſtat, ſalvum conductum hoc in paſſu conceſſum à tali magiſtratu, qui concedere eundem optimo jure potuerit. Nunc quærendum de cauſa, quæ qualiſnam ſufficiens ſit, cur ſalvus conductus legitimè & ritè decerni queat? Qua in parte quanquam varient Dd. præſertim quoad deciſionem hujus noſtri caſus, tamen re paulò altius conſideratâ, nihil eſt, quod moveri dextrè & probabiliter poſſit. Quapropter ut rem à calce examinem, certum eſt & jure expeditum, quod ſalvus conductus ſit ſecuritas vel præſidium, quod per officium præſidentis juſtè timenti datur, *Bart. in l. 6. §. 2. ff. de off. præſ. Coler. p. 4. c. 1. num. 203. de proceſſ. exec.* quæ definitio cum generalis ſit, propoſitoque huic noſtro apprimè conveniat. Etenim vim & manus injectionem timens hic actor commiſſionem hanc ſibi decerni, jus juſtitiamq; reddi poſtulavit, uti hoc ex actis commiſſionis patet, plura verba hic non faciam.

4. Præterea confirmatur cauſa προκαταρκτικὴ conceſſi ſalvi conductus inde: Quod Princeps curam agere atq; defenſionem ſuſcipere teneatur ſuorum ſubditorum, *Johan. Thil. de benig. in ſyntag. jur. Cam. 2. dec. 4. vot. 3. nu. 56. Johan Becht. de ſecur. & ſalv. cond. pag mihi 677. ibi:* Ut virtute protectionis jure ordinario ſibi competentis ſubditos territorii ſui tueatur, & videntes aliquem ſuæ juriſdictioni ſubjectum in periculo conſtitutum, omninò ſuccurrat, quantum poſſit, quia idcircò magiſtratus officio hue fungitur, ut ſubditorum ſaluti proſpiciat, *l. 2. §. 13. de O. I. l. 1. §. 12 ff. de off. præf. urb.* Quapropter non ſolum militibus & ſatellitibus inſtructus Princeps, ſed & imperio, ut

mandare aliis poſſit, quo vim & periculum metuenti ſubveniat & auxilium præſtet. Præclarè *Obrecht in tr. de def. c. 7. n. 40.*

5. Atque hoc imprimis attendi debet, quoties de exculpatione vel purgatione diffamati cujuſdam, cui capitali imminet judicium, res agitur, ut non immeritò hic dicendum: Ex conceſſione hujuſmodi ſalvi conductus bonum publicum perinde promoveri uti privatum, ut dicit *Proſper Farin. d. quæſt. 29. lib. 1. tit. 4 num. 84. arg. l. ſervum, §. publice, ff. de procur.* Ubi de addit *Farin. d. loc.* ut delictorum veritas eluceſcat & ne innocens damnetur, quæ omnia reſpiciunt publicam utilitatem, poteſt iſto caſu judex ſalvum conductum concedere, *Tiber. Decian. conſil. 69. n. 4. lib. 3.* dicens: hanc eſſe juris indubitatam concluſionem.

Atq; hæc ſunt cùm dubitandi tùm decidendi rationes, reſtat ut priorum ἀνασκευὴν ſeu refutationem ſubjungamus.

Ad 1. itaq; R. Quod *l. 1. §. 2. ff. de requir.* reis ἁπλῶς loquatur, neq; mentionem faciat, quid ſtatuendum, quoties inculpatus vel diffamatus ſalvũ conductum obtinuerit, qui certè cum conceſſus eſt & impetratus temerè violari aut revocari non debet, cum ſub fide & auctoritate prætoria nemo decipiendus ſit, præſertim quando diffamatus innocentiam ſuam docere, ſeq; innocentem eſſe, probare nititur *Proſper. Farin. d. loc. num. 48.* Deinde reſpondetur. Quod requiſitio illa, cujus meminit lex eadem, modo præſcripta ſit, eam enim anno ſaltem durare, docet JCtus *in d. l. 1. § 3. ff. eod.*

Ad ſecundum R. regulam illam certam quidem eſſe cum de delicto jam conſtat, neq; impugnamus quandoquidem apparuerit diffamatum, reum atque nocentem eſſe, remitti poſſe ad locum, ubi delictum commiſſum proponitur, *argum. alleg. l. 28. §. 15. ff. de pœn.*

Eadem ratione argumentum tertium falſis præſuppoſitis laborat, neq; enim hic conſtat de delicto commiſſo, ſed diffamatus ſaltem actor hic ex L. diffamari modo agens, quæ ſola diffamatio non obſtat, quo minus ſalvum conductum impetrare is potuerit, ſuamque innocentiam præſidio datæ ſecuritatis docere, ſeque ab inculpata noxa purgare. Qua certè in re præſumtum propoſitum diffamati, famæ ſuæ conſulere volentis provocando ad hoc judicium, qui premente conſcientia potius auffugere atq; ſic ſanguinem redimere poterat, ſciens ſiquidem nocens repertus fuerit, ſibi capitalem pœnam certò imminere.

Ad quartum R. Quod *d. l. 5.* ſententiam hanc apprimè confirmet nequaquam eam impugnet. Dicit enim JCtus reum purgare ſe debere & deinde accuſare, certe quid aliud hic intendit diffamatus, niſi ut ſe [illegible] purget & conſequenter diffamationem & injuriam ſibi illatam [illegible]. Deinde nihil movent Dd. allegatæ auctoritates & ſententiæ, eæ enim jam [illegible] [illegible], & nunquam in hiſce rebuſpublicis receptæ ſunt, prout *Farin. d. [illegible]*

juri

juri & æquitati diſſentaneas haſce opiniones & traditiones minus legales rejicit & refellit.

Quintum, ſimiliter nihil probat, uti enim à magiſtratu ſub quo deliquit reus impetrari poteſt ſalvus conductus, ita etiam ab alio quopiam, in cujus territorium inculpatus ſe recepit, cujus tutelam adverſus vim & poteſtatem ſibi offuturam imploravit, pericula imò mortem juſte declinando. Quod verò hac in parte Princeps recipere bene potuerit diffamatum, eidem ſalvam ſecuritatem promittendo maximè cum diffamatus ſe purgare niteretur, juris expediti eſt, uti ſupra id plenius evictum apparet

Ad ſextum Rx. (1.) Per inficationem per modo dicta *Tiber. Decian. d. conſil 69. n. 4. lib. 3.* (2.) Quod dicitur reum ſecurum factum poſtea decapitari poſſe, doctrina crudeliſ eſt & ad orcum releganda. Princeps ſiquidem jus gentium, quod in ſervandâ fide potiſſimum conſiſtit, violare non debet, ſi ſecus fecit Deum ultorem habet *Schurff conſ. 25. cent. 2.* (3.) Cauſæ cognitio quidem requiritur in decernendo ſalvo conductu, ea verò voluntaria non contentioſa eſſe debet. Etenim voluntas principis, quæ per modum gratiæ declaratur, ſuamque in plenitudine poteſtatis, fundatam intentionem habet, non impugnari poteſt nec debet contradictione tertii. Alias voluntas non eſſet, ſed nudum miniſterium & officium magiſtratus.

Ad ſeptimum Rx. Quod doctrina Gailii de proceſſu banni intelligenda ſit, cum enim in Camera non niſi per procuratores agere licet, in tantum, ut etiam legatis principum quorundam ad Cameram ablegatis, audientia nonnunquam denegata fuerit, ut teſtatur *Ciſner. ad expoſ. ord. Camer p. 1. de proem.* Placuit vigore ordinationis, ut etiam cauſæ criminales, qualis eſt cauſa banni, per procuratores ventilarentur, *Gail. d. c. 10. lib. 1. de p. p.*

Atq; tantum de primo themate; Alterum erat, an ad inſtantiam diffamati à magiſtratu, ſub cujus tutela modo degat, citari poſſit diffamator, isq; coram eo magiſtratu ſive Commiſſariis legitime datis compatere teneatur?

Quod negandum videtur:

1. Quoniam expeditum jure eſt, actorem ſequi forum rei & non contra *l. fin. C. ubi in rem actio l. juris, C. de juriſdict. c. ſi diligenti, c. ſi quis contra de for. comp.* Jam verò ille qui ad judicium provocat, petendo illi ſilentium imponi actor dicendus eſt, cum voluntariè petat & prior & principaliter ad judicium provocet, *l. inter ſtipulantem ff. de jud. c. forum, §. accuſator de V. S. Bart. & Dd. in l. in criminali, C. de juriſd.* Ergo.

2. Porrò ætiologia juris eſt. Quod provocans aliquem ad cauſam actor dicatur, *Nicol. Bo[illegible]. dec[illegible]. 25. num. [illegible]. dec. conſil. 487 Matth. de Afflict. in deciſ Neap. deciſ. 26[illegible]* ubi teſtatur ita judicatum fuiſſe per ſententiam conſilii Neapolitani, &c. Ergo. Sed ſententia verior eſt hæc: Quod diffamator forum rei teneatur ſequi, nempe qui dum cauſas diffamationis coram judice

 diffa-

diffamati dicere & docere debet, hoc ipſo actor conſtituitur, *l.diffamari,ubi Dd.C.de ingen.l.Titia.ff. de accuſat.l.ſi ea, Cod. de iis, qui accuſ. non poſſ.l.ſi et tempor., C. de remiſſ.pignor.* nec præterea obſtat, quod nemo invitus regulariter agere cogatur, *l.unic.C ut nemo invit.* Reſp. diffamatorem tacitè ſeſe adſtringere ad agẽdum, quia diffamare eſt tacitè ad judicium provocare. Quamobrem diffamator dum diffamat, ait *Gail.1.obſerv.9.num.5.* ad judicium tacitè provocare, ut jam diximus, & provide agere velle intelligitur, *l. d. diffamari, Schwiff.rervoſe conſil.15.num.19.cent.3. Weſenb. conſil.22.num.8.* ubi diſputat, an torqueri poſſit diffamator? Deinde, an diffamator una cum diffamato debeant incarcerari? *num.12.* Alias actio hæc perpetua eſt, nam extracta injuriarum actione confugere ad eam poteſt actor. *Idem d.l.c.n.22.*

Argumenta illa dubitandi, quod attinet, illa nullius ſunt ponderis & figuræ, falſum quippe eſt, & contra juris principia permilitat, quod diffamatus ſit actor vel accuſator in cauſa diffamationis per modo tradita, quin quod propriùs loquendo diffamator ad cauſam provocet magis quam diffamatus, qui potius invitus quaſi ad judicium trahitur volens conſulere famæ & honori ſuo, *Dd. in d. diffamari.*

Atq; tantum de hiſce thematibus: in cauſa hac cum Nobiliſſimo viro, Luca Langemantello, Archipræfecto Calebergenſi, & Conſiliario Guelfico, ego poſthac Commiſſarius fui conſtitutus, qui aliquoties per ſubſidiales citavi patrem defuncti; qui cum comparere nollet, tandem abſolutus eſt diffamatus & diffamator perpetui ſilentii pœna mulctatus, *per text.l.Titia.ff.de accuſat.Gail.d.loc.n. 6.*

CAPUT VII.

DE DENUNCIATIONE.

SUMMARIA.

1. *Denunciare quid?*
2. *Denuntiatio quotuplex?*
3. *Evangelicam denunciationem præcedat denunciatio civilis?*
4. *Monitio præcedere debet denunciationem vel famam inquiſitionem.*
5. *Denunciatio canonica alia generalis, alia ſpecialis?*
6. *Denunciatio judicialis quotuplex?*
7. *Moneri an debeant perſonæ quibus reverentia debetur, priuſquam denuntientur?*
8. *Magiſtratus ad nudam relationem vel famam ſeſe intromittere tenetur?*
9. *Superior magiſtratus coërceat inferiorum ſævitiam.*
10. *Mulcta merces dominorum pro cura & labore?*
11. *Filiusfamil. nimis duriter à patre tractatus implorato judicis officio emancipari poteſt?*
12. *Denunciatio communis quæ?*
13. *Quæ exceptio repellit accuſatorem, eadem rem[illegible] vel denunciationem vel denunciare poſſe?*
14. *Quilibet fama integra denunciare poteſt?*

15. De-

15. Denunciator homo vilis constitui potest a judice?
16. Jurare tenentur denunciatores?
17. Quando Fiſcalis adjungendus ſit denunciatoribus?
18 Succumbentes denunciatores non incidunt in Turpillianum.
19. An privati denunciatores ſuis ſumptibus teneantur proſequi accuſationem?
20. Denunciatores ſpontanei premio dato digni ſunt?
21 Vicini tenentur denunciare latrocinia in vicinia commiſſa.
22 Cautelæ aliquot traduntur pro denunciatore?
23. An denunciator poſſit eſſe teſtis in cauſa quam denunciavit?
24. An confeſſio rei coram officiali denunciante facta inducat probationem delicti?
25. Linea extrema inquiſitionis est tortura?
26 An ex ſola confeſſione ſequi poſſit condemnatio?
27. Confeſſio eſt ſol judicii?
28. Quomodo confeſſio infringenda & revocanda ſit in materia denunciationis?
29. Denunciator eſt vice unius teſtis?
30. An notificatio per ſchedulam in certo authore ſit vice denunciationis.

DE denunciatione ſupra diximus *part.1.cap.2.n 9. & ſeq.* quò lectorem remitto. Alias denunciare † eſt crimen alicujus deferre apud competen- 1
tem judicem ſine inſcriptione ad pœnam, *Aretin. in §. nec non ad denunciationem, num. 1. pag. mihi 21. Gandin. in rubric.* quomodo de maleficio cognoſcatur per denunciationem, ubi ait: Quod denunciare nihil ſit aliud, quam deferre reum criminis, *argum. l. ea quidem, Cod. de accuſat. l. 6. §. 3. ubi Dd. ff. ad SCtum Turpil.* denunciationem aliqui diſpeſcunt in quatuor ſpecies, † uti 2
Evangelicam, canonicam, judiciariam, & communem, *vide Aretin. d. loc. §. ſed quaero, num. 2.*

Evangelica dicitur monitio illa charitativa, quam præcedere † oporte- 3
re ſtatuunt ipſam denunciationem juxta illud Evangelicum. Si peccaverit in te frater tuus, corripe eum inter te & ipſum, *c. qualiter ext. de accuſat. ſpecul. de denunciat. §. quis. vers. 3. Gandin. in §. non ſolum, d. rubric. nu. 2.* quinimò uti inſcriptionem accuſatio, inquiſitio famam requirit, ſic monitio † præcedere 4
debet denunciationē, *Gandin. d. loc.* ut cum vir bonus & frugi accedit ad Epiſcopum dicens: Reverende Domine, dicitur de vobis, quod habeatis concubinam, quod eſſe non debet, *Specul. lib. 3. de denunc. n. 4.* vel nimiam familiaritatem habetis cum nepte vel conſanguineâ veſtra, moneo vos charitativè & per Deum, ut ab hujuſmodi ineptiis ceſſetis, nec ſitis famæ veſtræ prodigus, *c. fin. de accuſat. Spec. d. loc.* Porrò quod ſi Epiſcopus non deſtiterit denunciator teſtes tres convocet, & in eorum præſentia admoneat, monitio autem trina præcedere debet, priuſquam denunciet Papæ vel Epiſcopo, &c. *Specul. dict. loc.* ubi plura congeſſit, de hac ſpecie, quò lectorem remitto, canonica denunciatio † alia generalis eſt, alia ſpecialis. Generalis eſt, cum agi- 5
tur de publico ſcandalo præcavendo, cujus cognitio ad judicem Eccleſiaſticum ſpectat, ubi non requiritur ſolennis admonitio, *Spec. d. loc. num. 14.* ſpecialis eſt, qua deſiderat nonnihil in Epiſcopo quoad rectum & decentem adminiſtrationem, qui ſi errat, vel perperam procedit in officio, ſubinde quoq;

ter admoneri debet & deinde deferri. *Idem d.loc.* alias ſiquidem denunciator
præ timiditate nolit, & ſi velit præmonere, per alium expedire poteſt moni-
6 tionem, *d.loc.* privata judicialis † dicitur, quæ inter eſſe ratione datur per-
ſonis præſertim iis, quæ regulariter jus accuſandi non habent, ut ſervus enim
dominum accuſare non poteſt, uti nec ſubditus prælatum, libertus patronũ,
7 filius patrem, uxor maritum, niſi paucis exceptis caſibus, *Spec. d. loc.* qua †
8 in parte quoque non requiritur præmonitio. *Idem d. loc.* ubi magiſtratus ad †
nudam relationem vel famam publicam ſeſe intromittere ultrò tenetur ta-
centibus illis, ne plus æquo tenuiores divexentur a potentioribus, *l. 1. licet.u.*
§. ut potentiores, ff. de off. præſidis: quorum eſt officium parcere ſubjectis & de-
bellare ſuperbos. Ipſi enim quaſi in ſpecula collocati ſuper inferiores emi-
nent poteſtates, ut omnem iniquitatem eorum coërceant, *Frider. Mindan.*
de mandat. lib. 2. c. 13. num. 11. Gail. 1. obſerv. 17. n. 7. ubi ad erit. Quod conque-
rentibus ſubditis, nec præcedente monitione, quam denunciatio ejuſmodi
9 requirit, ſuperior † dominorum ſæviciam compeſcere poſſit mandatis ſi-
ne clauſula ne ultro ſolitum prægravet & dilaniet ſubditos. Quanquam enim
10 munera & mulctæ, quæ † Dominis debentur, & merces quaſi ſunt pro cura
& labore, quem domini pro ſalute ſubjectorum ſuſtinent, *Mind. d. l. 2. c. 44.*
non tamen hoc prætextu excoriandi ſunt ſubditi, quia potius, ut dixi, ſupe-
rior delata denunciatione vel quærela facta ſive non facta, modo conſtat pro
certo de ſævitia domini & timiditate ſubditorum, qui non audent dominum
nedum præmonere, multo minus eum deferre, ſuum interponere debet offi-
cium, *Specul. d. loc. Gail. d. loc.* De filiofam. idem jure legimus receptum, ut ni-
11 mis duriter † à patre tractatus implorato judicis officio emancipari debeat,
l. fin. ff. ſi à parentib. quis manumiſſ. fuer. de uxore: divortium petere & nu-
ptialia lucra repetere poſſit, *c. liter. ... §. fin. de reſt. ſpoliat. Schurff. conſ. 41. cent. 1.*
12 Deniq; communis † denunciatio eſt quam deſcripſimus ab initio hu-
jus capitis, quæ regulariter expeditur à nuncio vel fiſcali ad hoc conſtituto à
magiſtratu, qui imperium merum exercet, *l. 1. ff. de off. præfecti urb. l. 4. ... de*
13 *cuſtod. & exhib. reorum,* quod item dicitur, quæ † exceptio accuſatorem
repellit ab accuſatione, eadem quoque removeat denunciatorem, *l. qui ac-*
cuſare & l. ſequenti, ff. de accuſat. de denunciante intelligitur non ad id ordi-
14 nato, cum quilibet † famæ integræ denunciare poſſit, ſi calumnia abſit,
15 *c. qualiter ext. de accuſat. d. l. ea quidem. ff. de accuſat.* denunciator † verò à
judice conſtitutus poteſt eſſe homo vilis & infamis. *l. 1. c. de infam.* nempe qui
& denunciare & capere hominem poſſit, *Ariminenſ. in add. ad Aretin. ... in*
autem ... cui tamen opponi non poteſt infamiæ exceptio, ſcilicet quem ju-
dex ad hoc officium habilem fecit, *l. furti. § ſi quis, ff. de infam.* hinc eſt, quod
nuncii vel apparitores ſi per ſe infames ſunt, non pro infamibus ſint cenſen-
di propter officium nempe, quod gerunt, niſi infamia juris eos prorſus

cem-

commaculaſſet *vide Auguſt. Arim. in dict. addit. ad Aret. gloſſ. in autem, &c. pag. mihi* 12. Porrò quanquam hi denunciatores jurare cogantur, quod fideliter & dextrè fungi velint munere ſuo, nec calumniandi animo aliquem deferre. *Idem d.loc. Gandin. in §. qualiter cognoſcat de malef. per denunciat. n. fin. Specul. in tit. de accuſat. §. 1. verſ. pen. part. 3. ubi dicit:* Quod juramentum hoc ſit eximiæ efficaciæ, dubium tamen non eſt, quin probare † etiam teneatur 16
maleficium denunciatum expenſis & ſumptibus ærarii publici, qui ſiquidem viri ſint ſimpliciores & idiotæ Fiſcalis † eis adjungitur, quorum ope & con- 17
ſilio procedant & denunciata verificent, ſuccumbentes verò in † Turpillia- 18
num non incidunt, quoties abfuit calumnia, ſcilicet quos officii neceſſitas excuſat, quæ legem neſcit, i. nec in argumentum trahenda, *l. 1. 6. 2. ff. de R. J.* Quod dixi infames exiſtere etiam denunciatores, videtur ex moribus priſcis depromptum, nam delatores apud veteres, qui & quadruplatores dicebantur, omninò infames erant, *vide part. 1. cap. 3.* Sed quid ſi privatus, vir integræ famæ & fidei denunciet delicta magiſtratui, præſertim eodem in loco, ubi nulli denunciatores ſunt conſtituti vel ſiquidem ordinati ſint, illi deferre vel accuſare intermittant, utrum ſuis †|impenſis teneatur proſequi denunciati 19
criminis probationem? ℞. Quod videatur teneri eum proſequi crimen delatum, *l. 36. ff. de R. J.* damnum verò, quod quis propria culpa ſentit non intelligitur damnum, *l. 203. ff. eod.* (2.) Si denunciator conſtitutus crimen delatum tenetur probare, *l. ea quidem, ff. de accuſat.* quidni privatus quem nulla officii neceſſitas juvat vel excuſat? ergo, *l. 162. ff. de R. J.* ſed res eſt plana: conſiderandum quippe eſt. (1.) Quod præſidis officium ſit purgare provinciam malis hominibus, *l. 3. ff. de off. præſid.* qui hoc fine, hac intentione deputavit denunciatores, ne laterent improbi, & delicta manerent impunita, *Aretin. d. loc.* ſin autem iſti vel ſocordia, connivention vel ipſa corruptione diſſimulant maleficia, quæ vir bonus tandem detegit, & defert magiſtratui, utrumne † officium hoc denuncianti erit damnoſum? Sanè ſi denunciatio Evan- 20
gelica, vel canonica indemnem reddit denunciatorem, *Specul. d. loc.* quidni hæc vulgaris relatio criminum. Porrò hoc reſpectu, qui vis deterrebitur à denunciatione, cum tamen multus hoc ſit favorabile, ſummè neceſſarium in republica, *Ariminenſ. d. loc.* adeo, ut diſſimulatores criminum publicorum ſæpenumero pro aſſentientibus habeantur. Hinc maleficium in confinibus duarum villarum commiſſum denunciare tenetur proximior † villa *Alb. de* 21
Roſate in tract. de ſtat. part. 4. q. 85.

Nec prorſus videtur ſeſe in miſcere rei ad ſeſe non pertinenti uti abjiciebatur, qui proditorem patriæ manifeſtat, utpote communem hoſtem, qui incendiarium, veneficum, qui adulterum judici nominat, tantumque defert indiciorum, ut formari poſſit & generalis & ſpecialis inquiſitio, nonne hic homo potius premio dignus, *Angel. Aretin. d. loc. §. quæro ſecundum. Salycet.*

ubi decidit denunciatores ſpontaneos premio dato honorandos eſſe, &c. quam ut ſuis expenſis proſequi maleficium teneantur. quod (2.) loco perperam opponebatur, hinc *Aretin. d. loc. §. tertio quæro, num. 6* ait. Quod denunciatione facta ſit in arbitrio judicis procedere, vel via denunciationis vel inquiſitionis? Certe via inquiſitionis incedere tutius eſſe vulgò videbitur, quia denunciatio ſolennis admittit proceſſum pene ordinarium, nam denunciatus omnes illas exceptiones in ingreſſu litis opponere poteſt denunciatori, quæ regulariter opponuntur accuſatori, *l. 8. ff. de accuſat.* cautela itaque eſt

22 † & modus expeditior per inquiſitionem procedere delatione cumprimis à privato facta. Adde quod nedum denunciator cogatur probare denunciata, qui ſuo officio ſatisfeciſſe dicitur, quoties nomina teſtium poſtquam nominavit reum & factum recenſuit, judici exhibuerit, quibus procul dubio delictum poſſit probari, *non obſtante, l. accuſationem, ff. ad Turpill.* altera cautela ſuccedit: Quod iſto modo, ubi ſtatum cauſæ invertit judex atque ex denunciationis

23 tramite in viam inquiſitionis inceſſit, ut ipſum denunciatorem † diſſimulatâ cauſa teſtem requirat, *Aretin. d. loc. §. quæro. an judex, nu. 21.* Planè ſi uti privato conſtat de delicto denunciatori, in ipſo denunciationis proceſſu te-

24 ſtis eſſe poteſt, *Arimin. in addit. d. §.* Porrò an confeſſio † delinquentis coram officiali denunciante factâ inducat probationem delicti? non pauci ſic exiſtimant, ut videre eſt apud *Aretin. d. loc. in §. quæro*, an confeſſio facta coram tali officiali, &c. verior eſt ſententia, non plenam inde probationem, ſed indicium ſaltem naſci, quod tantæ ſit efficaciæ, ut abſque indiciis aliis producat quæſtionem, *Bart. poſt gloſſ. in l. 15. §. fin. ff. ad L. Jul. de adult.* quæ ſententia ſuſtineri nequit, (1.) quoniam juxta commune Dd. axioma non niſi unicum occurrat in materia criminali indicium, acquieſcens in ſola ſui ſubſiſtentia, ad producendam quæſtionem ſine adminiculis, quale eſt relatum unius teſtis de viſu deponentis, *vide part. 1. cap. 4.* (2.) veriſimile eſt & pene præſuppoſitum neceſſarium, denunciatorem demonſtrationes habuiſſe, cum inquireret in crimina, quæ tandem confeſſus ſit reus, quod ſi ita eſt, uti veriſſimum præſuppoſitum, non ex ſola confeſſione, ſed junctis indiciis antecedentibus condemnatur magis reus, & ſubjugatur torturæ, etenim denunciator ad a integra ſuper inquiſitione ſua edere tenetur, judici, ut ſingulis circumſtantiis penſi-

25 culatè diſcuſſis tandem perveniat † ad extremam limam, quæ eſt tortura, *gl. in l. 2. §. fin. ff. de interrog. act.* quæ decidit, quod confeſſio facta, quoad unum objectum & cauſam, & ſic ad effectum illius cauſæ, noceat confitenti ſaltem quoad præſumptionem aliquam vel indicium. Porrò dicit *Aretin. dict. loc.* Quod confeſſor ille cogatur coram judice competenti & ordinario repetere confeſſionem & in eadem perſiſtere, ſimiliter quoque habet [illegible] (1.) cum enim confeſſio ejuſmodi non plenam inferat probationem [illegible] ſolummodò indicium per modo dicta, (2.) nec non pro confeſſione extrajudiciali

ſit

ſit agnoſcenda, niſi denunciator habeat delegatam poteſtatem cognoſcendi
de maleficiis, reſervatâ executione ejus, cui competit jurisdictionem ordinariam. At
confeſſio extrajudicialis non hoc præ ſe fert, ut eandem reperire negarat
reus, qui multa exipere poteſt adverſus confeſſionem iſtam, *qui de re part.*
cap.5. neq; obſtat, quod ex ſola † confeſſione poſſit ſequi condemnatio licet 26
proceſſus retrò fuerit nullus, *Matth. de Afflict. in deciſ. Neapol. deciſ. 381.* ubi
enim confeſſio apparet, quæ † ſol judicii poteſt non immeritò appellari, nul 27
litates allegatæ, quaſi nubeculæ evaneſcunt, *Bald. conſil. 354. lib. 3.* hinc vulgò
dicimus: Quod nemo contravenire poſſit propriæ confeſſioni, *c. per tuas de*
prob. et l. generaliter, C. de reb. cred. unde adhuc dicendum eſſe videtur, (1.) con-
feſſionem illam parere ſententiam, (2.) nec eam revocari poſſe à reo. Reſp.
Haſce & alias juris generalis regulas de objecto civili non criminali loqui,
uti ſubjecta materia, unde depromuntur, ſat ſuperque declarat. In cauſa hac
ſanguinaria, & pluſquam ardua ſæpenumero ejuſmodi admittuntur rimæ,
quibus innocentes dilabantur, civili reo prorſus obtuſæ & denegatæ, &c. *Fa-*
rin. conſil. num. 9. ubi ſcribit & docet, quo pacto infringatur † confeſſio in re 28
criminali facta, non obſtante denunciatione vel quovis alio ſubſidiali officio,
imò ne reus cogatur inhærere confeſſioni temerè & ſine ordine juris rece-
ptæ, hinc *Boſſ. in tit. de inquiſit. num. 77.* inquiſitionem ineptam, quæ de mer-
cenariis utplurimum præſumitur, abſolutoriam magis quam condemnato-
riam generare adſtruit. Quin quod in rebus civilibus confeſſio quævis non
paratam pariat executionem, *Matth. de Afflict. in d. deciſ. Neapol. deciſ. 233. &*
deciſ. 240. alias hic nota. Quod denunciator † habeatur vice unius teſtis 29
Ariminenſ. ad Aretin. in d. §. nec non ad denunciationem, & in §. quæro, an de-
nunciatori credatur. At unius teſtimonio non creditur, *l. 9. Cod. de teſtib.* ibi.
Simili modo Sancinus, ne unius teſtimonium nemo judicum in quacunque
cauſa facilè patiatur admitti, & nunc manifeſte Sancinus, ut unius teſtimonio
omninò teſtis reſponſio non audiatur etiamſi præclarè curiæ fulgeat honore,
uti nec ſoli & unico arbitro non creditur, *l. ne in arbitris, C. de arbit. &c.*

Denique hic notatum eſto: Quòd notificatio hæc non ſpectat, nec no-
men mereatur denunciationis ubi judici ſcedula † defertur, in qua tacito 30
nomine notificantis denunciatur crimen & adſcribuntur nomina teſtium
forte ſubornatorum, *vide Boſſ. in tit. de denunt. in fine, num.* 18. licet quando &
pro re nata talis notificatio admittatur, citans *Bart. textus vero, in c. in-*
quiſitionis, & ibi gloſſa in §. id planè. Sed de hiſce rebus alibi
forſan prolixius & commodius.

CAPUT VIII.

DE CITATIONE.

SUMMARIA.

1. *An citatio ſit neceſſaria in cauſis indiciorum?*
2. *An citatio trina requiratur?*
3. *Annotatio bonorum requirit citationem edictalem ſi reus abſens fuerit?*
4. *Quâ de cauſa lites criminales cito expediendæ?*
5. *Non omne ſummarium dici poteſt executivum?*
6. *Summarius eſt proceſſus indiciorum non executivus.*
7. *Diluuntur quædam argumenta quæ obſtabant.*
8. *An & quando [illegible] proceſſus indiciorum [illegible] capere [illegible].*
9. *Citatio nulliter expedita nullitates parit etiam in proceſſu hoc [illegible].*
10. *Nulla citatio [illegible] ſine expreſſo mandato judicis?*
11. *Prius de perſona quam de re & ratione quærendum [illegible]?*
12. *Iudex [illegible] criminalibus ex motu proprio non [illegible] citationem?*
13. *In cauſa inquiſitionis & denunciationis judex utitur officio nobili & [illegible] poteſt partem non imploratus?*
14. *In cauſis [illegible] reus [illegible] dilationes litis ingreſſum impedientes?*
15. *An reo articuli inquiſitionales in exordio litis ſint communicandi?*
16. *Qui terminus dandus ſit, ubi citatur primo reus?*
17. *A termino citatoris nimis anguſto appellari poteſt?*
18. *Non ſufficit ad domum fieri citationem rei abſentis vel latitantis?*
19. *An extra domum [illegible] Eccleſia, in qua [illegible] poſſit [illegible]?*
20. *Neceſſitas non [illegible]?*
21. *[illegible] hodie inolevit?*
22. *Non tam reus quam offenſus à reo citari debet, licet non accuſaverit.*
23. *Si ad cauſam vel articulum cauſæ ubi abſolvendus erit reus [illegible], non [illegible] offenſus, denuo accuſari poteſt non obſtante [illegible].*
24. *Citatio [illegible] nulliter factam purgat & habilitat [illegible].*
25. *Sola præſentia abſq; citatione [illegible].*

1 CItationem neceſſariam † eſſe tam in puncto inquiſitionis, quam proceſſu accuſationis evincitur haud dubiè, *ex l. 5. ff. de pœn. Boſſ. de [illegible] d. [illegible].*
2 *Brun. de indic. [illegible] ff. de pub. iudic.* quæ trina † eſſe debet vel unica pro omnibus, *l. ad peremptorium ff. de jud. Gand. in tit. de cit.* licet ad actus alios judicales requiratur citatio una *Boſſ. d. loc.* ſi prima citatio non eſt peremptoria, decerni debet ut intra 20 dies reus compareat ad compo[illegible]
3 mœ[illegible]s penales, uti ait ex Socino *Boſſ. num. 4.* alios ubi bona † [illegible] annotantur annus integer cedit citato, ubi notificatio eſt neceſſaria [illegible] ctum, vel ſubſidiales [illegible]untur, ut ſiquidem non compareat [illegible] a die promulgati edicti, bona cadant in commiſſum *[illegible] ff. de requir. reis, [illegible] C. eod.* ne [illegible].

Quod proceſſus inquiſitionis & reſpectivè indiciorum ſit executivus [illegible]

ſummarios *ſupra c.* 1. *&* 2. neq; non juris candori cōvenit ad Neſtoris ætatem ex-
tendere cauſas criminales, quæ † quā par brevitate, expediendæ ſunt ne ſuffla- 4
mine litis admodum diſſipato, rei vel dilabantur vel carceris tædio ſe ipſos in-
terficiant, ærario publico, quo ſuſtentantur rei, ſubinde etiam jacturam haud
modicam ferente, &c. Sublimetat proceſſus ſummarius non requirit cita-
tionem, & quæ alia proceſſus ordinarii ſolennia, *Gail. 1. obſerv. 14. & ſeqq.*
Mindan. de mandat. lib. 1. cap. 10. & ſeqq. R. Non omne † ſummarium exe- 5
cutivum dici poſſe licet in materia civili reciprocari ſoleant hi termini loquē-
di, ſummarium dicimus eſſe † proceſſum indiciorum non executivum, quæ 6
dicendi phraſiologia planè inuſitata eſt & incognita ſubjectę noſtræ materię,
quanquam enim ab incarceratione & citatione reali nonnunquam inchoen-
tur proceſſus criminales adeoq; uti videbitur ab ipſa executione & præcepto,
non tamen, quaſi univerſæ ordine procedatur, inde inferendum † eſt in cau 7
ſa civili, ubi executivè proceditur, & ab ipſa executione fit principium, *Gail. d.*
obſ. 14. decretis ſine clauſula mandatis ſub pœna, niſi quod ſub themate ver-
ſatur, confeſtim præſtatur, ſolvatur. *Idem Gail. d. loc.* cum alias ſiquidem re-
cto ordine procederetur, non niſi à citatione eſſet incipiendum, quæ nempe
dicitur baſis radix & fons proceſſus, deinde ab exhibitione libelli, quæ trun-
cus appellatur, judicii a Gylhauſen, ... & ſic conſequenter. Cæterum
ſi indiciorum proceſſus à captura ſumit exordium, dextrè inchoatur, quia ca-
ptura citationis ſpecies eſt, quæ vulgo citatio realis dicitur, *Gail. 1. obſerv.* 48.
n. 10 de qua re capite ſequenti. Ergo licet proceſſus ille ... vel quandā ana-
logiam dicatur ſummarius, non tamen ab ipſa executione inchoari debet, uti
inchoare non poteſt, ſequeretur enim ſine enixā cauſæ cognitione delatum
vel inquiſitum criminis eſſe torquendum vel puniendum, quod abſurdum
eſt, & admodum durum. Hac analogia quidem executivus dici poſſet, † hic 8
indiciorum proceſſus, ſiquidem ſub ipſo judicii ingreſſu indicia apparerent
manifeſta, vel ſub inquiſitione generali tantum eluceſceret argumentorum.
Indiciis verò nondum ſat ſuperque enucleatis, eò uſque deſudandum eſt, do-
nec veritas cauſæ appareat & aurora tenebrarum diſpergat nebulas: a cita-
tione ut concludam tandem, eſt inſtituendus proceſſus indiciorum vel a ca-
ptura, ſiquidem inquiſitio generalis tantum non fert ponderis, ut judex diſ-
cretus inde procedere valeat ſummariè, *Ægid. Boſſ. in tit. de citat. num.* 16. ibi.
Judex commiſit quod Cajus & alii inquiſiti recitarentur, *in l.* 10 *ff de pub. jud.*

Cum itaque conſtat citationem eſſe neceſſariam, hoc ipſo ſequitur, ut
liget & ſtringat reum citatio, modo ea decenter & legitimè fiat, *Hipp. de Mar-*
ſil. in §. præterea, num. 73. ubi ſcribit: quod citatio † nulliter expedita pro- 9
ceſſum criminalem etiam corrumpat, *c. fin. ext. de feriis*. ubi conſiderandum
eſt, utrum reus degat in ditione judicis inquirentis vel alibi, ſi in territorio in-
quirentis citari reus debet, (1.) ut nomen judicis exprimatur, a quo citatur

 per

per rationem, *l. 2. ff. ſi quis in jus vocat. Afflict. deciſ. Neapol. deciſ.* 1. quoad ſubjectam materiam, *And. Gail.* 1 *obſerv.* 48. *num.* 10. rationem reddit, nulla citatio quippe ſive realis, quæ fit per captivitatem vel apprehenſionem per-
10 ſonæ, ſive perſonalis † fieri poteſt abſque juſſu judicis, *l. fin. C. de ex*[illegible], *c. ex parte dem. 2. de reſcript. Specul. de cit.* §. 1. *num.* 8. (2.) deinde ut citator ſit judex competens tam reſpectu juris territorialis, quam poteſtatis, nempe ut habeat imperium & poteſtatem gladii in facinoroſos, *authent. qua ſi* [illegible], *C. quom. & quand. judex. &c Gail d. loc.* (3.) Si delegatus eſt judex, ut tranſmittat citato copiam commiſſionis, *c. cum in jure ext. de off. deleg.* quod tamen hodiernus non obſervat Stylus, nam in termino compartionis tenor commiſſionis prælegitur & denunciatur citato cum demonſtratione manus & ſigilli judicis delegantis, quid tenor commiſſionis involvat, ſi quid autem vitii ſub & obreptionis vel falſitatis ſuboleret citatus, tenorem commiſſionis requirere in ſcriptis poſſet & in termino excipere contra reſcriptum, quod ſi negligeret, in contumaciæ reatum procul dubio incideret, *c. cæterum, de reſcript.* (4.) requiritur nomen citati ejuſq; cognomen, quia contra non nominatum executio fieri & per conſequens in contumaciam procedi nequit, *l. quoties, §. ſi quis nomen, ff. de hered. inſt. l.* 12. *& ſeqq. ff. de except. rei judicat. l.*
11 *fin. C. ſi per vim alio modo.* hinc vulgò loquimur. Quod prius † de perſona quam ratione quærendum ſit cum qualitas ſine ſubjecto conſiſtere non poſſit, *l.* 14. *ff. de re reb. cred.* (5.) nomen citantis quoque exprimi debet, rationem reddit, *Gail* 1. *obſ.* 5[illegible] *num.* 4. ut citatus intelligere poſſit citationem ad citantis
12 petitionem & non ex officio judicis factam eſſe, judex † enim nō debet proprio motu, nedum in criminalibus citationem decernere, ſed demum à parte imploratus, alias nullius momenti erit citatio, *l. fin. ff. de bon. auth. jud. poſſid. & l. ad peremptoriam, ff. de jud.* quæ ſententia non niſi in cauſa accuſationis nequaquam inquiſitionis vera eſſe poteſt, vel denunciationis. Quia judex in
13 hisce caſibus vigore † officii nobilis procedit, ubi verò utilitatem publicam concernit cauſa, citatio ſine miniſterio privati expeditur, *Bart. in l.* [illegible] §. *Julianus. ff. de damno inf. l.* (6.) Porrò uti in civilibus ita in criminalibus cauſis requiritur expreſſio cauſæ, *Idem Bart. in auth.* [illegible] *num.* [illegible] *C. de lit. conteſt. Gail.* 1. *obſerv.* 51. *n.* 2. non verò, ut articuli inquiſitionales confeſtim loco cauſæ expreſſionis, prout in civilibus accidit, reo tranſmittantur, propterea
14 ut ne dilationes reo in cauſa hac ardua aufferantur, ttalatitium quippe eſt, † reum hoc paſſu perdere dilationes litis ingreſſum remorantes, *c. præterea,*
15 *ext. de dilat.* (2.) nec reus dum videt articulorum † rigorem confundatur & fuga ſibi cauſæque conſulat, neq; enim anſa præberi debet, quâ judicia fiant eluſoria, *l.* 13. *C. de jud.* (7.) deinde uti dies & terminus exprimi debet in citatione cauſæ civilis ſic quoque criminalis cauſæ, *B. ff. d. loc. de citat.* [illegible] tamen ut exprimatur, vel cum præſens eſt reus, ei 10. dierum [illegible]

termi-

termino datur, quod non eſt neceſſarium in cauſa criminali. Ubi verò is abſens eſt, & dum in alieno degit territorio, per ſubſidiales eſt citandus, terminus † 16
laxior ei eſt conſtituendus pro arbitrio citantis, ne citatus ex alieno territorio veniens,
ſcatur à termino admodum † coangustato provocandi, *Vant. de nullit. ex* 17
defect. citat. Gail. 1. obſ. 53. num. 19. uti ab aliis terminis nimium coarctatis ad ſuperiorem provocare poteſt reus, *Chylian. Koning. in proceſſ. cap. 2. (8.)* citatio denique ad domum fieri debet citati *Gail. 1. obſer. 48. n. 14.* quod ſic intelligit, *Boſſ. de citat. num. 16.* modo domi reperiatur reus, *Gandin. de cit. in princ.* ratio eſt, quia citatio magis delinquentem, quam locum in quo reus degit, reſpicit,
gloſſ. in c. cauſam ext. de cit. & contumac adeò ut ſiquidem domi † non offen- 18
dat nuncius reum, perquirere & perſequi eo uſque tenentur reum, donec ipſum reperiat, *l. 1. ff. de lib. agnoſcend. ubi Bart. l. 4. §. ait prætor, ff de damn. in-*
fect. utrum autem quis poſſit citari repertus in platea, † qui domi quæſitus 19
non adorat, quæri ſolet? Porrò an in balneo, in foro, in conviviis, in nuptiis, vel coram cœtu hominum in Eccleſia? diſquiri ſolet. Reſpond. ſi conſtat domi denunciatam vel intimatam eſſe citationem, non corrumpere citationem modis prædictis extra domum factis vel repetitis, neq; enim abundans cautela nocet imò vincula duo plus ligant, quam diadema ſimplex.

Neq; hoc refert ſive ante quis domi abſens citatus ſit ſive cum offendiſſet citandum foras, denunciaſſet citationem & poſtea domi abſentis familiam certioraſſet de citato patrefamilias, citatum à ſe dominum foras, & jam denuo eum citari domi, &c. Sufficit quippe, quocunque etiam pacto vel modo citatur reus citationē ad ipſius notitia perveniſſe vel revera pervenire potuiſſe, *Boſſ. d. loc.* civilius verò nuncius factitabit, ſiquidem non in nuptiis & in
cœtu turbæ citat: & offendat reum, modo ne neceſſitas, † quæ non erube- 20
ſcit, & legem neſcit, aliud dictitaret, *l. 162. ff. de R. J.* in Eccleſia citare reum contra decorum eſt, & res ſcandali plena. Quapropter nuncius, ſi latitationem animadvertit & ſuboler. Expectare poterit rei de templo egreſſum, & domum ei denunciare citationem, qui autem juſta de cauſa ad templi quaſi ad Aſyla confugiſſent, non ſunto obnoxii citationibus, qua de re nos pro-
lixè, *in diſp. noſt. ad Inſt. Juſtin. diſput.* 2 hodierno † jure, quo utimur, bene- 21
ficium iſtiuſmodi non proderit reis, *Schneidew. in § fin. inſt. de his, qui ſunt ſui vel alieni jur.*

Ad rem redeundo: hoc notatum eſto, quod judex inquiſitione inſtitu-
tâ non tam † reum quam offenſum à reo, cui vel reus furtum fecit, bona di- 22
ripuit palam, vel cujus patrem, fratrem, amicum, occidit, una citare teneatur ad evitandam nullitatem, ut vel offenſus adſiſtat Fiſcali vel accuſet reum, *gloſſ. in c preſbyter. 2 4. 5. Boſſ d. loc. num 41.* uti in caſu converſo offenſus citari de-
bet quoties reus † propter innocentiam quam probavit, eſt abſolvendus, 23
quod niſi attendatur, offenſus denuò accuſare poterit non obſtante abſolutoria

toria ſententiâ ex Angelo *Boſſ.d.loc.* in fine alias quæri ſolet, an pendente termino citatorio reus manu apprehendi & in carceres mitti jure poſſit? vide eundem, *d.loc.num.*41. Colophonis loco notatum eſto, quod citationem nul-
24 lam & imperfectam, ſola † purget & habilit comparitio, *l.1. §.ſed ſi, ff. de*
25 *feriis, Bart.in l.1.ff. de in jus vocand. Marant.part. 6.tit.de citat.n.* 73. Sola † præſentia abſque alia citatione ſufficit, ait *Gail.* 1.*obſerv.*58.*nu.* 3. quia præſens regulariter citari non debet, cum citationis effectus ſit comparitio, quam concluſionem quoq; in cauſâ criminali effectivè ſtringere ſtatuit, *Gail. dict. loc num* 4.

CAPUT IX.
DE CAPTURA REORUM.

S U M M A R I A.

1. *Captura eſt citatio realis.*
2. *Definitio capturæ traditur.*
3. *Ex quibus cauſis ad torturam procedatur.*
4. *Iudex injuſte aliquem incarcerari faciens tenetur actione injuriarum.*
5. *Suſpectus de fuga quando capi poſſit?*
6. *Quæ perſonæ incarcerari poſſint.*
7. *Perſonæ illuſtres nobiles fidejuſſoribus datis carceribus relaxandæ & quomodo puniatur fidejuſſor reum non exhibens?*
8. *An fidejuſſor de reo præſentem do totias quoties fuerit requiſitus, liberetur binâ præſentatione factâ?*
9. *An fidejuſſor qui intra certum tempus promiſit ſiſtere reum, committat ſtipulationem, ſi quid in repræſentet eum ſine interpellatione judicum?*
10. *Sed quod ſi judex nolit recipere ſatiſdationem [illegible]?*
11. *Captura injuſta eſt injuria graviſſima.*
12. *Carcer [illegible] no tempore ſordida & infamis [illegible] eſt.*
13. *Quales eſſe debeant cuſtodes ſive carcerei?*
14. *Compedes quid?*
15. *Cuſtodia duplex, publica & libera.*
16. *Iure Saxon. debitor tanquam [illegible] cogitur [illegible] creditori.*
17. *[illegible] quid?*
18. *Re[illegible]?*
19. *Androlepſia quid?*
20. *Ad hoc ut repreſſaliæ valeant, quæ requirantur & de notabilia ibidem.*
21. *An injuſte incarceratus ſi effringat carceres & effugiat pœna fracti carceris teneatur?*
22. *Pœna frangentis carcerem eſt [illegible].*
23. *Commentarienſis ſi reum dimittat, qualiter puniatur?*
24. *Quid ſi dimittat injuſte carceratum?*

1 CUm captura † & incarceratio, citatio quædam realis ſit, quæ in cauſa [illegible] tam neceſſaria, uti in civili cauſa, citatio quælibet, æquiſſimum eſt, ne rei [illegible], vel contra quos inſtituta & habita eſt inquiſitio, [illegible] glant, atque ſic inquiſitio per denũciationem incepta, eluſoria [illegible], [illegible] rum fugere proprium ſit. Nam qui malè operantur, lucem odiſſe ſolent. Quapropter de captura reorum hic dicendi locum facio.

[illegible]

Definiri † autem poteſt captura diffamati alicujus apprehenſio ejuſq; in cuſtodiam miſſio, *l.* 1. 4. 8. *ff. de cuſt. & exhib. reor.* Magiſtratus qui capere poſſunt reos, ſunt judices cum ordinarii tum delegati, id eſt, qui juriſdictionem delegatam mandato alterius adminiſtrant, *Conſt. Car. V. art.* 4. 2

Cauſæ † vero unde magiſtratus ad capturam procedere poſſunt, ſunt diffamatio, ſuſpiciones, & quandoq; indicia leviora per generalem inquiſitionem reperta, *d. conſil. crim. art.* 6. *Damh. in pr. crim. c.* 9. *Clar. in §. fin. q.* 28. *Did. Cant. q.* 7. *in princ.* quibus ceſſantibus. Judex † injuſte incarcerare dictum inculpatum tenetur, itaq; actione injuriarum, & ad omne intereſſe, *Hipp. de Marſil. in pr. crim. §. conſtat. n.* 64. Atque hæc indicia capturam antecedentia ab illis, quæ ad torturam fundandam ſufficiunt, ita diſtinguũtur, quod hæc multo efficaciora, ſemiplenamq; probationẽ inferentia requirantur, ut ſupra dictum eſt, & deinceps pluribus dicetur. Iſta ad capturam leviora & imbecilliora ſufficiant. Ratio eſt, quod circa torturam periculum majus prædominetur, nam reus nonnunquam exponitur vitę periculo, ideoq; cautius eſt agendum, *Didac. Cant. d. q.* 3. hinc tortura dicitur gravior utriuſq; manus abſciſſione, *vide Boſſ. in tr. crim. tit. de tort. reor. n.* 11. & 12. quo ſpectat, *Conſtit. Crimin. art.* 6.

So jemand einer Ubelthat durch gemeine Leumuth beſüchtiget/ und andere glaubwürdige Anzeigung/ Verdacht/ Argwonig/ und derohalben von der Obrigkeit Ampts halber angenommen würde/ er ſoll doch mit Peinlicher Frage nicht angegriffen werden/ es ſey dañ zuvorn redlich/ und derohalben genugſame Anzeigung und Vermuthung von wegen deroſelben Miſſethat auff jhn glaubwürdig gebracht/ & *l.* 1. §. 17. *l.* 18. §. 2. *l.* 48. *l. fin. ff. Re* 27. *l.* 8. *l.* 3. *C. eod. Clar. in §. fin. quæſt* 64. Cæterum ſi reus culpatus de fuga ſuſpectus eſſet, minoris dubii res eſt, quin ne etiam judex minima vel nulla inquiſitione præmiſſa fugientem vel fugere volentem capere rectè poſſit, *Jaſon. in l. admonendi, num.* 213. *de jurjur. Felin. in c. cum accepiſſ. n.* 20. *de prel. Didac. Cant. d. q.* 3. *cit.* quæ ſunt rationes & circumſtantiæ, quæ judicem, ut ad capturam procedat meritò movere debent.

Privati † an capere poſſint reos ſine mandato magiſtratus, quæri ſolet? 5 quod affirmatur in duobus caſibus, (1.) ſi in crimine flagranti deprehendatur reus, (2.) ſi de fuga ſuſpectus ſit vel jam in fuga exiſtat. Quemadmodum vulgò receptum eſt, in cauſa civili, creditori permiſſum eſſe debitorem fugientem capere, *l.* 10. §. 16. *ff. de his, quæ in fr. cred. Gail.* 1. *obſ.* 26. & 2. *obſ.* 42. etiam die feriato, *d. l.* 10. §. 16. *Bald. in l. etſi propoſitas, ff. quom. & q. jud.* nam regula eſt. Quod feriæ quidem differre poſſint ſolutionem, non verò auferre idem, *Bald. d. loc.* Quæ concluſio etiã de Clerico fugam machinante verificatur, ita ut a laico capi & judici ſuo ſiſti poſſit, *Gail. d. loc.* Quod tamen (ut paucis hanc rem attingam obiter) hactenus jure obtinet. (1.) Modo debitor tempore

 contra-

contractus ſolvendo fuerit communi hominum opinione, neq; tunc de fuga ſuſpectus habeatur, *l.3.§.5. ut in poſſ. leg. l.13.§.6. ff. de damn. inf. l.1. ff. ...* ut debitum ſit certum, liquidum, & chyrographo debitoris, vel inſtrumento publico, aut teſtibus probatum, qui teſtes quoq; ob fugæ periculum etiam debitore non citato recipi poſſunt, *Bald. in l.10. §.13. ff. de his, quæ in fraud. cred. Jaſon. in §.1. de act. Socin. reg.4... fall.6.* (5.) Ut juramento creditoris ſuſpicio fugæ probetur judici. Quibus requiſitis ceſſantibus, judex capturam creditori non permittat *Gail.2.obſ.44.* ubi tamen dicit de conſuetudine, iſta non ſervari, quoniam arreſta in locum capturæ hujuſmodi ſucceſſerint in Germania paſſim recepta moribus, atq; uſitata.

Hoc animadvertendum, quod ſi creditor debitorem de fuga ſuſpectum proſequens, male tractet vulnerando eum telo adverſus capientem, ... minime defendentem, jus ſuum perdat, *Bald. in auth. ſed omnino, num.14. C. ne ux. pro marit.*

6 Perſonæ † capi & incarcerari poſſunt omnes vulgò, quæ torqueri poſſunt, torqueri autem poſſunt rei, niſi qui ſpecialiter prohibentur, quâ de re infra dicendi locus, de muliere conſtitutum habemus, quod etiam pro debito 7 Fiſcali hodie capi, & incarcerari poſſit, *auth. ſed hodie,* † *C. de off. diverſ. jud.* de perſonis illuſtribus, quæ an ... cuſtodiæ tradendæ vel fidejuſſoribus committendæ ſint, decidit *l.1. & ... ff. de cuſt. & exh. reorum inde Ulpian. in l.3. ...* ex divo Pio refert non eſſe in vincula conjiciendum eum, qui fidejuſſores dare paratus eſt, niſi tam grave facinus eum admiſiſſe conſtat, ut neque cuſtodibus neq; militibus committi debeat, &c. uti de confeſſis reſcribit *Venulej. in l.5. ff. eod.* ne fidejuſſoriæ credantur cautioni, ſed aſſerventur in vinculis & cuſtodia donec ſupplicium de iis ſumatur, nimis quippe foret & grande abſurdum relaxare eos compedibus, quos morte jam imminente dilapſuros procul dubio, omnis ſanæ mentis judicaverit, niſi in caſu valedicendi amicis. *vide Fr. Pol. in hiſtor. for. Rom. lib. ...*

De fidejuſſore, qui reum criminis, proque ... ſatiſdedit, non exhibuit, hoc ſtatuit idem *Ulpian. in l.4. ... eod.* Ut pœna pecuniaria plecti debeat vel extra ordinem ſi neq; in cautione nec decreto præſidis certa quantitas comprehenſa eſt, ... conſuetudo ... qualiter mulctari vel plecti is debeat, *d.l. ... C. de ... l.2. ff. ...* Jure Saxonico certa mulcta definita eſt hoc in caſu, ... quippe, ... ſi non exhibuerit reum fidejuſſor tempore determinato ... integro Wergelde, id eſt, 24. ... Alſchorf ... art. ... lib. ... & art. ... lib. ... art. 1... Quod eo in caſu ... obtinere Colerus ... *de ... germ. deciſ. ...* qui fidejuſſor ſe obligavit ad eandem pœnam, quâ ſuſtinere debeat reus principalis, *Socin. in l. ſi ... l.16. de V.O.* Quando ... ſecundum jure civili ſecundum modum ... fidejuſſor in corpore puniatur, ... & pecunia ... *Hipp. de Marſil.*

Marſil. in pr. crim. §. quia. Cum nemo ſit dominus membrorum ſuorum, *l. liber homo ff. ad l. Aquil.* Cæterùm ſi in cautione expreſſa mulcta eſt, etiam ſi ea in hoc paſſu excedat ſtatuti & conſuetudinis modum & rationem præſcriptam, jure quoque tenet & obligat promiſſorem, *Add. art. jur. Saxon. art. 4. lib. 2. Coler. d. loc.* ubi dicit: Quod ſiquidem in ipſo criminis actu delinquenti non deprehendatur, admittendus is ſit, ut maximè ad cautionē fidejuſſoriam præſtandam, qua expromittatur exhibitum iri reum in quovis termino judiciali ſub mulcta ſ[illegible]. Idem obtinere ait, quoties reus defenſionē prætēdat neceſſariam in cauſa homicidii vel aliam exceptionem relevantem allegat, in aliis delictorum ſpeciebus. Reo a. ante ſtatutam juridicam mortuo, fidejuſſor liberandus ſit, non obſtante eodem jure Saxonico *lib. [illegible] art. [illegible]* quoniam pœna præſertim nondum per ſententiam condemnati defuncti, expiret cum homine. Mors [illegible] omnia ſolvit, *l. 2. l. pen. C. ſi re vel accuſ. l. 1. [illegible] 3. [illegible] ad SC. um Turpill. l. 6. ff. de pub. jud. l. Neratius ff. de R. J. Coler. d. deciſ. 2[illegible] & deciſ. 2[illegible] Sebaſt. Med. [illegible] tr. mors omnia ſolvit, paſſim.* Hîc quæritur, an fidejuſſor † de reo 8 præſentando toties, quoties fuerit requiſitus liberetur bina præſentatione facta? Quod affirmatur *argum. l. 8. de R. Jur. l. [illegible] & l. 451. ubi Donell. Duaren. ff. de V. O. l. 137. §. 7. ff. eod. Dd. in l. 15. ff. de dam. infect. Roland. à Valle conſil. 21. lib. 2. Fachin. 9. contr. [illegible]8.* Nec in contrariam ſententiam ſtringunt, *l. [illegible] de commiſſo, §. ſi quis aliquem, ff. de leg. [illegible] eſt quæ bon. fide, 1[illegible] §. fin. ff. de damn. infect.* ſcilicet, quæ loquuntur cum voluntas eſt obſcura nec clarius expreſſa, *Fach. d. loc.*

Circa idem & hæc reſultat quæſtio, utrum fidejuſſor, † qui intra cer- 9
tum tempus promittit reum præſentare committat ſtipulationem. Siquidem non præſentaverit eum abſque interpellatione magiſtratus & nova citatione, *Affirm. Gomez d. [illegible]. 9. Paul. de Caſtr. conſil. 10. lib. 2. per l. magnam, C. de cont. & comm. ſtip.* Qui ſententiam contrariam defendunt, argumenta ſua fundant, *in l. ſi penum, 24. ff. quand. dies leg. ced. l. ſi fidejuſſor, ff. de fidejuſſ. vide Fachin. d. lib. 9. cap. 77.*

Sed quid ſi nolit recipere judex † idoneam cautionem de judicio ſiſti, 10
fidejuſſoresq; locupletes & omni exceptione majores repudiaverit? Reſp. à ſuperiori cogendum eſſe judicem, ut recipiat idoneam & ſufficientem cautionem, *Gail. 1. obſerv. 26. num. 7. & 11.* nonnunquam quoq; injuriarum agi poteſt adverſus judicem ejuſmodi iniquum & crudelem. Captura † enim 11
eſt injuria irreparabilis, *Godel. in tr. de venef. & mag. lib. 3. c. 6. n. 14. per l. 32. ff. de injur. Schurff. conſil. 47. cent. 3. Laur. Kirch. concl. com. concl. 5. Mynſing. cent. 5. obſerv. 69.* Quandoquidem carceres hodierni ex conſuetudine perverſa, meritò ubivis abroganda, potius pœnæ ſint, quam cuſtodiæ reorum, *Gail. 1. obſ. 26. in fine, ubi dicit.* Reſpectu cauſæ finalis carcerem de jure civili non ad vindictam ſed ad cuſtodiam ſaltem adhiberi debere, *l. 8. §. 9. & l. 48. l. 9. ff. de pœn.* ibi. Carcer ad continendos non puniendos homines haberi debet, *l. [illegible] C. de*

 cuſt.

cuſt.reor.l.fin.C.eod. Secus tamen quoad ipſam materiam, ut loquuntur, hoc eſt ipſum incarceratum, cui carcer ſæpè maximum & periculoſum eſt tormentum & ſupplicium, ſub quo ſæpenumero juſti & innocentes perire coguntur.
12 tur. Alias carcer † dicitur ſordida & infamis manſio, *l.16.ff.de p[illegible] l.2 [illegible] lib. hom.exhib.* Unde *Farinac.in quæſt.crim. 27 num. 2.* carcerem appellat locum ſubterraneum horribilem & immanem, imò ſepulturam vivorum, conſummationem bonorum, conſolationem inimicorum & experientiam amicorum, *Ægid.Boſſ.de carc.c.3.* Planè non ratione & oratione levi, ſed graviſſima. Carcerum horum uſum atrociſſimum deſperationis plenũ & impium, damnant & ad Plutonis antra relegant Doctores paſſim, *vide Vent. de Valent. in part.litig.lib.1.c.14.& lib. 2. c.12.* ubi dicit. Inprimis incumbere magiſtratui, ut ſubterranei carceres, in quibus carcerati humiditate & frigiditate confecti, infirmitates attingunt & vitæ periculum ſubeunt, tollantur, prohibeantur, e contrà carceres clari atq; luminati in ſingulis provinciis ſubſtituantur, ad quos tamen ſuſpecti acceſſum vel aſpectum minimè habeant, neq; vero iisdem, niſi criminis evidentia & delicti atrocitas aliud dictitare videatur, ſubinde omni amicorum conſilium & ſolatiũ penitus adimendum, ne vitã, ipſe qua vis exuta ante diem fugiat indignata ſub umbras, *Dd.in l. 1. C. de cuſt. reor.* Imò præcavendum, ut monet *Damh.in pr.crim.c.7.tit.de carc.* Ne carcerarii Commentarienſes deducant reos ad loca, † quæ cœleſtis aer pertingere nequeat, minuſq; tam procul ab hominum copia eoſdem protrudant, quo ipſorum voces & clamores à nemine exaudiri queant. Quandoquidem non rarò accidat, ut innocentes tædio carceris, & inſtinctu diaboli, qui mœrore profundo oppreſſos rarò vel nunquam intentatos relinquit, cum deſperatione vitam ſibi adimant, *Hering. de fidejuſſ. c. 1[illegible]. num.* 182. vel à ſerpentibus & viperis, aliiſq; ſubterraneis reptilibus ſuffocentur, & exemplo triſtiſſimo pereant *vide Joan. Wolff. tom. 2. rer. memor. pag. 7.* ubi teſtatur & refert inter alia de carceribus, quod ante annum Chriſti 5[illegible]4. Pontifices non habuerint carceres, quos pridem Eugenius inſtituerit ad coercendos Clericos, &c. Porrò de alimentis carceratorum agit, *contr.in polit.8.cap.[illegible] [illegible] crimin.art.* 204.
14 De compedibus, † quibus carcerati conſtringuntur non uſurpandis, ſed intra clauſtra ſolutis & liberis relinquendis reis, agit *Bald.in l.2.C.de exhib. reor. Par.de Puteo [illegible] ſynd. cap. 3. 6. carcer.* ligamenta vocat genus torturæ, *Corn. conſil.* 32[illegible] *col.1.* *Foll. in pr.crim p. 2. Dav. lib. 2 rer. quot. c. fin. §.6.num.* [illegible] Conſtantini verba humanitatis pleniſſima refert, dicentis: Non per manicas ferreas & inhærentes oſſibus mitti oportet, ſed prolixiores catenas, ut & cruciatio abſit, & permaneat ſub fida cuſtodia reus. Improbat autem idem Larumæ & compedum genus, quod Hiſpani bejum, Germani, Fußblöck appellant, *Rutg. Roland.à [illegible] comm. [illegible] p. 1. lib. 2. c. 1.* duplicem † conſtituit cuſto-
15 pellant, *Rutg. Roland.à [illegible] comm. [illegible] p. 1. lib. 2. c. 1.* duplicem † conſtituit cuſtodiam, publicam & liberam hæc eſt, wann die Sach[illegible] von einem gewöhnen wird

wird *Vent. de Val. lib. 1. c. 14. num. 18. & 2. c. 12. n. 39.* Cui (intellige liberæ cuſtodiæ) arreſtum affine eſt obſtagium & repreſſalæ. In cauſa arreſti iniquiſſimè hoc ſtatuit jus Saxon. Ut ſi debitor † non poſſit ſolvere creditori, judex loco debiti debitorem in manus creditoris trudat, à quo non ſolum ad operas & ſervitia compellatur, ſed & compedibus & vinculis, ne auffugiat, conſtringi poſſit, Landrecht *art. 39 lib. 3.* Weichbild *art. 27. circ. fin. Coler. in decis. ger. decis. 135. Gail. 2. de p. p. c. 2. nu. 23. A. Gell. noct. att. lib. 10. cap. 1.* Quod jure civili longè ſecus conſtituitur apparet, *l. 12 junct. auth. ſeq. Cod. de O. & A.* Sancit præterea idem jus Sax. operas debitoris in ſingulos dies certam æſtimationem recipere, atque ſic quantitatem debiti minui. Cæterum ſi compedibus & vinculis teneatur debitor in ſingulos dies æſtimari incarcerationem inſtar operarum, quas ſolutus præſtare potuiſſet, *deciſ. Lipſ. 517. vol. 2. Chil. Kon. in proc. [illegible] num. 1.* Quod ipſum tamen inter illuſtres perſonas fallere, ait *Jacob. Scult. in addit. Col. d. deciſ. 135.* aliasq; perſonas dignitate & exiſtimatione [illegible]es, *Coler. de proc. 2. c. 3. n. 119.* 16

Obſtagium † quod incarcerationis ſpecies eſt, *argum. l. 9. l. 28. §. [illegible] ff. ex quib. cauſ. man. Gail. 2. observ. 45. & de pp. lib. 2. c. 2.* definitur conventio quædam jurata vel aliter [illegible]ata fide confirmata, de ſe ſiſtendo & non recedendo ex certo loco donec ſatisfecerit creditori, *c. ex reſcript. ext. de jur. jur.* Landr *art. 11. lib. 2.* [illegible] hatten auch *Jaſon. in l. 18 num. 41. ff. de juriſdict. Sichard. in l. 12 num. 6. C. de ob. & A. Dan. Mo[illegible]. 3. ſemeſt. 30. Johan. Kop. deciſ. 2.* Obſtagiorum hujuſmodi uſus licet primum imperii conſtitutionibus non improbaretur, *Conſt. Polit. de Anno 548. in §* von Wucherlichen Contracten, nec Camera quoque reclamaverit, prout ea de re præjudicia aliquot recenſet, *Gail. 2. observ. 45. n. 2. adde Bald. in c. ex reſcripto de jurjur.* ubi diſputat, quomodo ex conventione liber homo capi & incarcerari queat. Veruntamen, quia in germania permagnus obſtagiorum abuſus increſcebat indiesque idem accumulabatur, idque extremo ſæpe malo [illegible]itorum & nullo creditorum commodo, placuit cum abuſu, uſum ipſum prohibere & prorſus tollere noviſſima, *Conſt. Pol. reform. de Anno 577. ſub tit. 17. [illegible] c. 45. & de pp. lib. 2. c. 2. Joach. a Beuſt. in l. admonendi, num. 44. ff. de jurjur.* ita quoque Elect. Saxon. per omnes provincias ſuas abrogavit obſtagia, *Conſt. prov. [illegible] c. 22. p. 2. §.* wiewol auch. Quanquam in [illegible] adhuc obſtagia obſervari ſcribat, *And. Gail. de Arreſt. c. [illegible] num. [illegible]* [illegible] tamen loco [illegible] habeantur potiſſimum eo in caſu, cum domini territoriorum non ſecum ſubditos ſuos pro ſorte & annua penſione obligaverint, & [illegible] retardatę ſolutionis, ut ſubditi ex conventione creditori ſtatuto [illegible] quæ obligationes cum ex conſenſu proficiſcantur [illegible] tam naturali rationi conſentaneum, quam pacta ſervare, validæ & creditoribus ſalutares ſunt, ideoq; bona fide cuſtodiendæ, *[illegible] l. 7. §. 7. ff. de pact. Gail. d. t. loc. Gylm. in theor. cam. 2. pag. 227.* 17

 Repreſ-

18 Repreſſaliæ † barbaro vocabulo dicuntur pignorationes rerum vel perſonarum, cum unus pro alio vel res unius pro re alterius apprehenduntur, *cui dejnrjur n.* 6. quas clarigerationem appellat *Guil. Bud. in lib. ff. de pœn. Al. in l.* 190. *de V. S.* licet hoc diſpliceat *Tiraquell in l. ſi unquam*, 8. *C de revoc. don* uſum repreſſaliarum antiquiſſimum eſſe non novicia conſuetudine introductum, ut docet *Zaſ. in l.* 2. *§. & ita ff. de O. I.* Fæciales quippe à Numa Pompilio ideo inſtituti, ne alicui ex confœderatis urbi vel provinciæ bellum injuſtum inferretur, & ſi forte ab una vel altera parte fœdera violarentur, hi ad partem pacifragam admonendo ipſam, ut juſſa facerent, ni parerent, bellum comminabatur, *Dion. Hal. Liv. Feneſt.* paſſim hinc inquam repreſſaliarum originem profluxiſſe exiſtimat, *Zaſ. d. loc. Gail. de p. p. c. 2. lib. 1. Budeus ad l. 6. ff. de* 19 *pœn.* Pertinet huc etiam Androlepſia, † qua homicida ſi in exteram urbem profugiſſet, non dedebatur eis, ad pœnam expoſcitus, ad quos facinus admiſſum pertinebat, ſed permittebatur injuriam paſſis pignorandi poteſtas, ſcilicet ut reum in vinculis tenerent, donec de culpa rei certiſſime conſtaret, unde verba Demoſt. in hanc ſententiam.

Si quis violenta morte obierit, pro hoc gentilibus & agnatis androlepſiæ ſunto, quoad judicium cæteris, pœnasq; ſubierint vel necis auctores dediderint, *Bud. d. loc.* dicimus autē androlepſiam exercere pro pignorare homines, ut pignorationes latine pro repreſſaliis appellare liceat, *Gail. de p. p. lib* 2. *c.* 2. *in fine.* Repreſſaliæ hujuſmodi an jure divino, naturali, gentium & civili valeāt? Paſſim controverti & diſputari ſolet. Quod valeant jure divino ſtatuit Auguſtin. referente canone *cauſ.* 23 *quæſt.* 2. *c.* 2. Quandoquidem repreſſaliæ ſunt ſpecies juſti belli ne pereat juſtitia, jus autem divinum permittit adverſus gentem, juſtitiam adminiſtrare nolentem, bella gerere *Gail. d. loc.* Sed quia creſcente hominum malitiâ, repreſſaliarum uſus ſcandali materiam ſuppeditare videbatur, imo hinc inde crudeles lites, cruentas ſeditionum faces inter ſubditos excitare, placuit conſuetudinem ubivis locorum abrogare, abrogatam radicitus de Imperio Romano extirpare. Accedit porro, quod ne dum ſtatibus Imperii, multo minus privatis bella gerere promiſcue relinquatur poteſtas. Quod ut apertius conſtet, hæc præſtant argumenta.

20 1. Prohibere † & permittere ſunt contraria. At repreſſaliæ permittunt in via publica in itinere publico auff weſentlicher freier Straſſen/ quem prehendi capi & detineri poſſe. quod tamen expreſſe prohibet, *l.* 1. *§.* 2 3. 11. *ff. ne quid in loc. publ. t. t. C. ſi a non comp jud.* Ergo. Adde quod in repreſſaliis forum actoris ſequi cogatur reus ſiquidem relaxationem repreſſaliarum petat, contra jura communia, quibus dicitur actorem forum rei ſequi debere, *t. t. ex de for. comp. l. fin. ff. de juriſd. Heig. p.* 1. *q* 11 *n* 53.

2. In repreſſaliis requiritur denegatam fuiſſe juſtitiam & ejus conſequendæ [illegible] non aliud, quam ex repreſſaliis ſupereſſe remedium, *W[illegible]*

conſil.

conſil. 26. *Gæd conſil.* 34. *Coler. de proceſſ. execut. p.* 1. *c.* 2. *num.* 271. At jus civile jubet, ut judice inferiore juſtitiam denegante, adeatur ſuperior vel principi ſupplicetur. *l.* 20. *C de app. Gylm. in ſymph. cam. p.* 27. *& p.* 288. *Gail.* 1. *obſ.* 28. *Idem de pig. c.* 2. *num.* 4. ubi dicit: Quod Imperator non gravatè concedat ſtatibus imperii & civitatibus liberis privilegia contra repreſſalias etiam ſine cauſæ cognitione. Quandoquidem talis conceſſio pacem publicam confirmat, quæ nec alicujus præſentiam & per conſequens citationem requirit, *argum. l.* 1. *l.* 4. *§ vid. ff. de* [illegible] *liber. l. qui poteſt, ff. de R. J. Jaſon. in l. reſcript. nu.* 4. *ff. de pact.* Unde Frid. Secundum ſupplicem libellum cujuſdam repreſſalias adverſus Florent. poſtulantis rejeciſſe annales referunt. Et in ſubditos regni Galliæ prorſus abrogatas eſſe repreſſalias teſtatur, *Cujac. in l. un. C. ut med. lib.* 11.

3. Porrò jus civile præcipit, ut contra judicem malè judicantem ſuperior inquirat, *l. fin. ff. de var. & extr. cognit.* At remedium repreſſaliarum prohibet, ne quisq; ſubditus loco judicis malè & perperam judicantis conveniatur, conveniretur enim innocens pro nocente contra regulam. Qua placuit: Quod innocens abſolvendus ſit non damnandus, *l. abſentem. C de pœn.*

4. Jura & leges non permittunt, ut homo liber pignori detur, *l.* 6. *C. quæ res pig. oblig.* Cum nullum hominis liberi ſit commercium vel æſtimatio, *Paul.* 5. *ſent.* 1. Imò legibus ſancita pœna eſt in eos, qui pignus ejus ex conventione ſuſcepiſſent, *l. fin. C. quæ res pig. oblig.* At in repreſſaliis liber homo, alter pro altero occupatur pignoratur. Ergo.

5. Jus civile præcipit, ut ordo judiciorum ſervetur, *l.* 4. *C. de ſent. & interl.* id eſt partes citentur, libelli edantur, rei exceptiones audiantur lite conteſtata probationes & reprobationes hinc inde decernantur, ſententiæ ferantur, quæ tamen omnia repreſſaliæ negligunt. Ergo.

6. Quod non ratione introductum ſed ab initio, errore, poſtea conſuetudine obtentum eſt in aliis & ſimilibus non obtinebit, *l.* 39. *ubi Zaſ. Bart. ff. de ll.* At repreſſaliarum uſus ratione non nititur, ſed eidem adverſatur. Ergo.

Minor probatur. 1. Quia injurioſum eſt alium pro alio teneri, obligari, conveniri, *l.* 3. 11. *C. de O. & A.* cum noxa caput ſequatur, *§* 1. *Inſt. de nox. act.* & æquum ſit pœna ibi conſiſtat, ubi culpa orta eſt, *Liv. lib.* 38. Sed per repreſſalias capiuntur innocentes pro innocentibus, bona & res extraneorum pro rebus & bonis debitorum.

2. Iniquum eſt alterum alterius odio prægravari, *c. odia de R. J. in* 6. At in repreſſaliis alius pro alio gravatur, debitor ſecurus relinquitur, innocente gravato, & cum injuria maxima arreſto. Sunt itaque repreſſaliæ in genere odioſæ, natura peſſima & intolerabiles in Republica, *Coler. de proceſſ. execut. c.* 2. *num.* 288. *Gail. d. c.* 2. *lib.* 2. *de p. p.*

Sed ad rem ipſam unde digreſſi eramus, redeundo præterea quæri ſolet

21 hoc in loco, an injuſtè carceratus, † ſi carceres effringat & fugiat, pœna fracti carceris teneatur? Quod Dd. nonnulli negant, quos refert *And. Farin. 9. contr. 71.* Quorum tamen ſententiam apertè refellit, *Call. in l. 13. ff. de cuſt. & exhib. reor.* ibi: Quamvis innocentes inveniãtur ex eo crimine propter quod conjecti ſunt in carcerem, tamen puniendi ſunt, qui mediam amplectuntur ſententiam, diſtingunt & præſupponunt hoc, ne pœna teneatur fractor carceris.

1. Ut non ſervato juris ordine ſit incarceratus,

2. Ut mortem probabiliter reus metuerit, quoniam ignoſcendum ei, qui quocunque modo conatur ſanguinem ſuum redimere, *l. 1. C. de bon. eor qui ſibim. ipſ. &c.* Quo pertinet, quod judici de facto procedenti liceat reſiſtere, *l. 5. C. de jur. fiſci. Covar. 1 reſ. 2. Rip. in l admonendi, n. 17. ff. de jurjur.* Coronidis loco etiam hoc quæramus. Quid ſi in palatio vel alio certo detentionis loco, oſtiis vi ventorum, tempeſtate aëris inſolita perfractis, effugiant? Quemadmodum Apoſtolus apertis ab Angelo foribus carcerum, evaſit & erupit de manibus Herodis, *Actor. 12. Negat Jaſon in l. admonendi, num. 174.* Quia in pœnalibus infert, non fit extenſio cum odia reſtringenda ſint, & quavis interpretatione benignâ molliendæ potius pœnæ, quam exaſperandæ. Lex autem pœnam capitis in eos dictitavit, qui ipſi carceres effringentes dilabuntur, *d l. 13. ff. de cuſt. & exhib. reor.* Cæterum quod attinet, ſiquidem cuſtodiæ deputatũ alium locum præter carcerem effringat & affugiat reus: Parum vel nihil differt hoc cum præcedentibus. Ecquid enim refert frangaturne prætorium vel alia domus cuſtodiæ deputata, ait *Menoch de arb. jud. ca[illegible]* An carcer ipſe cum eadem ubiq; ſit rationis identitas. *Farin. de carcer. [illegible]* & lex non verbis, ſed rebus impoſita ſit, *l. 13. l. 32. ff. de ll. Schurff. con[illegible]*

22 Dicebam modo pœnam capitis † in eos ſtatutam legibus, qui carceribus effractis evaderent, ubi hoc etiam conſiderari ſolet, ad *l. 1. §. de [illegible] carc.* an pœna corporalis ibidem intelligatur mors naturalis, ul[timum ſup]plicium, vel mors civilis, deportatio, in metallum in arenam miſſio. Quandoquidem appellatione mortis, etiam deportationem, amiſſionem c[ivitati]s comprehendi conſtat, *l. 103. ff. de R. J. Burſ con[ſ]. l. 34. Blanc. ad l. [illegible] de [illegible] num. 4[illegible] & ſeq.* ubi judicis arbitrio hunc articulum committit, qui pro [illegible] que facti reum vel ultimo ſupplicio, vel pœna quadam mortem civilem [illegible] inferente, afficiat, *ad d. l. 103. ff. de R. J.* reſpondeat, quod a verborum proprietate quidem non ſit recedendum modo ne voluntas conſtitutionis, vel circumſtantia cauſæ aliud quaſi ſuo jure requirat, *arg. l. [illegible]. ff. de [illegible]*

23 De commentariense † ſeu carcerum cuſtode, ſiquidem carceratum dimittit, hoc ſtatuitur, ut eadem pœna teneatur, quam ſuſtinere debebat reus, præſertim ſi malitia, favore precio corruptus id admiſerit, *l. [illegible] cuſt. reor. ubi Bald. Menoch. de arb. jud. caſ. 312. Damhan pr. crim. [illegible]*

Quid

Quod extendendum quoq; eſt ad eum, qui conſiliũ & operam tulerit reo, quo evaderet, *Dd. d. loc.* Sed quid ſi per negligentiam cuſtodis effugiat carceratus? *Damh. dict. loc.* ſtatuit, ipſum quoque ad pœnam ſupradictam teneri, cum negligentia culpa ſit, *l. 4. l. 30. ff. ad L. Aquil.* ac pro re nata dolus, *l. 2. ubi Johan. Gœd. Brech. de V. S.* Idem pariter decidendum, ſiquidem ſubſtitutus cuſtodis dolo vel culpa dimiſerit reum, *Farin. de quæſt. d. quæſt. 31. Clar. §. fin. q. 36. Marſ. in §. dilig. nu. 12. Conſt. Crim. art. 8. hac de re ſic habet:* So ein Hüter/der Peinlichen Gefengnuß/einen/der Peinliche Straffe verwircket/außhelffe/der hat dieſelbe Peinliche Straffe/an ſtatt deß Ubelthäters/den er alſo außgelaſſen verwircket/käme aber der Gefangene durch bemeltes Hüters Unfleiß auß der Gefengnuß/ſolcher Unfleiß iſt nach geſtalt der Sachen vnd Rechte zu ſtraffen. Cæterum quid ſi cuſtos carceris † injuſte carceratum di- 24
mittat vel alias notoriè innocentem eſtimat, anne pœna conſtitutione expreſſa teneatur? Quod negandum videtur *per l. 1. § conſilium, ff. ne quis eum, qui in jus voc. Jaſon. in l. 1. §. ad prætorem, ff. eod. Clar. quæſt. 2. verſ. ſed quid ... Menoch. de arb. jud. caſ. 1. num. 24. Roland. à Valle conſil. 40. volum. 2.* Quod imprimis verum intellige, quotieſcunq; judex de facto proceſſerit, id eſt, ſi contra jus & rationem iniquè quenquam in cuſtodiam detruſerit, contra quẽ jura facultatem reſiſtendi quoque permittunt, *l. 5. 7. C. de jure fiſci.* Etenim vim vi repellere ll. tum gentium cum civiles individuitatæ concedunt, *l. 1. ubi Bart. & Dd. com. ff. de J. & J. l. 4. ff. ad L. Aquil.* Quanquam *Farinac. d. loc.* non innocentiam rei, ſed injuſtam incarcerationem ipſam, contra juris ordinem factam excuſare ſtatuat eximentem, Sed falſum adſtruere hoc: Cum majori videatur excuſatione dignus prorſus innocens, quam hic, qui contra juris ordinem & proceſſum incarceratus fuerit, propterea, quod is forſan nocens eſſe queat. Alii diſtinguunt aut eximens reum una confringit & violat carcerem, aut nihil effringit, ſed eximit ſaltem carceratum, qui per calumniam adverſarii in carcerem miſſus erat, primo caſu teneri ajunt cuſtodem, *d. l. 3. ff. de cuſt. & exhib. reor.* Secundò non utiq; *per l. 4. ff. ne quis eum, &c.* nonnulli denique hanc cauſam arbitrio ſuperioris judicis decidendam relinquunt, *Menoch. d. loc.*

CAPUT X.

DE FIDEIUSSORIBUS CARCERATORUM.

SUMMARIA.

1. *Antiquiſſimus eſt cautionum judicialium uſus.*
2. *Quæ perſonæ datis fidejuſſoribus relaxari poſſint?*
3. *An nobiles ... relaxandi ſint ... ne*
4. *An homines ampliſſimarum facultatum ſint relaxandi.*

5. De [illegible] *divitiarum ad* [illegible] *for-des & vitia.*

6. M. Cato Major extra cuſtodiam quadragies ſexies cauſam reus dixit, & toties abſolutus eſt.

7. An [illegible] *quando diebus feriatis rei ſine carceribus relaxandi?*

8. Iudex non [illegible] *debet, ut exceptio* [illegible] *ria per* [illegible] *in judicium.*

9. An fidejuſſor pro reo proprium ſanguinem poſſit expromittere?

10. Quando [illegible] *eſt reo* [illegible] *pœna ceſſat bene* [illegible]

11. [illegible] *ultimo ſupplicio* [illegible] *endus.*

12. In arbitrarüs [illegible] *judex cog*[illegible] *cum* [illegible] *rum.*

13. [illegible]

14. [illegible] *reo* [illegible] *fidejuſſor* [illegible]

nu[illegible] *tates pro*[illegible] *& re*[illegible] *ſſumere* [illegible]

15. Quoties fidejuſſor teneatur [illegible] *?*

16. Omnes hac fidejuſſoria [illegible] *comprehendi debet.*

17. [illegible] *& quando fidejuſſor* [illegible] *reum* [illegible]

18. [illegible] *non decenter pr*[illegible] *tutoribus* [illegible] *ſtatutis, ſi non ſint* [illegible]

19. Fidejuſſor lib[illegible]

20. An fidejuben[illegible] *de damno* [illegible]

1. Contra [illegible] *proc*[illegible]

22. Obſola[illegible] *nunquam* [illegible] *pcenalis.*

23. Ad [illegible]

DE fidejuſſoribus carceratorum vel carcerandorum nonnihil pro re nata diximus capite antecedenti, quia verò id ob[illegible]ter ſaltem ibidem occurrerit, paulo altius rem ipſam inveſtigabimus. Diſpiciendum itaq; erit. (1. Quæ perſonæ reorum ſint committendæ cautionibus & quibus ex cauſis, (2. qualiter cautio ſit præſtanda & (3.) ad quid teneatur fidejuſſor?

1 1. Nihil [illegible] de antiquitate † cautionis [illegible] dicam qui[illegible], *Liv lib.* [illegible] *de bel. punic ibi.* Tribuni om[illegible] ſſa mulctæ certatione rei capitalis diem Poſthumio dixerunt, ac ut vades da[illegible] et prehendi à viatore, atq; in carcerem duci juſſerunt. Poſthumius vadibus datis non affuit. Idem libro tertio ab V.C. de Cæſone: Reus (dum conſulerentur patres [illegible] retentus in publico, vades dare placuit, qui unum vadem trium millium æris obligarent, quod darentur permiſſum eſt Tribunis decem finierunt: tot vadibus accuſator vadatus eſt Re[illegible]. Hic primus vades publicos dedit, quo alludit *Cicero 3. off* ibi. [illegible], qui morti addictus eſſet, paucos ſibi dies commendandorum ſuorum cauſa poſtulaviſſet, vas factus eſt alter ejus ſiſtendi, ut ſi ille non reverti ſſet, moriendum eſſet ſibi ipſi, adde *Horatii* [illegible] *Satyr.1.*

Ille datis vadibus, qui ruri extractus in urbem eſt
Solos felices viventes clamat in urbe.

Nec non illud ex Plauto in Curc[illegible] *Ubi tu es qui me convadatus es veneris vadimoniis. Ubi tu es, qui me* [illegible] *ecce me,* [illegible] *contra. Siſto ego tibi me, & mihi contra* [illegible] *adio.*

2 Sed ad rem: Perſonas † relaxari cuſtodia, vel non mittendas eſſe in Carceres, *ait* [illegible] *l. 1.* *ff. de cuſtod. & exhibit. reor.* (1.) reſpectu [illegible]

ris,

ris, (2.) ampliſſimarum facultatum, (3.) innocentiæ accuſati, (4.) vel delicti de quo quæritur non capitalis, *l.1.ff.eod.*

Ante omnia verò, quod præmonendum erat delicti gravitas eſt inſpicienda, quâ ſtringente vix erit, ut perſona † etiam illuſtris vel admodum 3
potens opibus committatur ſatiſdationibus, quam notulam limitationis ergò prioribus ſubjicere voluit, *Ulpian.in d.l.3.* hinc læſæ majeſtatis, proditionis, ſeditionis publicę reum, aliorumq́, criminum exceptorum fragili credere cautioni, res eſt periculi & ſcandali plena, *Dd. in d l.3.* Quamquam vero durum videatur, perſonas alioquin egregiores ſqualidis detineri carcerum ædibus, conſtringi compedibus, ita tamen lex ſcripta eſt, *argum.l.12.§.1.ff. qui & à quib.manum.* ut qui immemores natalium & proſapiæ in tantos ſeſe reatus præcipitârunt, & majorum, & factorum propriæ virtutis encomia & prærogativas meritò perdant, *argum.l.5.C.ad C. Jul. Majeſt.* Proinde dicimus vulgariter: Quòd proditio & falſum hominem redigat nobilem in nihilum. *Tiraquell. in tr.de pœn.cauſ.21.part 1.cap.8. num.17.* Porro cum *d.l.* mentionem faciat reorum innocentiæ, utpote meritoriæ cauſæ hujus dimiſſionis, notatum eſto, ut ſiquidem de facto ipſo vel delicto non conſtanter, ſed per indicia remota & generalia tantum conſtiterit, reum eo uſque rigore carceris eximendum, nec non militum cuſtodiæ tradendum, donec de reatu clariora & pene indubitata emerſerint indicia, quo reſpicere haud obſcurè videtur, *Bart. in d.l.1. ibi: in modo detinendi differentia, &c.* Quo in caſu itaque totum palatium Cæſaris, certa domus, conclave, vicus, villa, loco carceris aſſignari poterit reo. *Tiraq. d. loc. cauſ.21.* Homines plebejos quod attinet, jam tenenda eſt diſtinctio, *Ulpian. nec non Bart. in d.l.1.* nempe ut ſi crimen ultimum ſupplicium minetur & mereatur reus nō tradatur in manus fidejuſſorum. Sin pœnam corporalem vel pecuniariam producat, demum cautio admittatur, *Bart.in d.l.1.num.1.* (2.) ampliſſimarum facultatum fit mentio *in d. l.1.* qua in parte prior quoque & modo data explicatio quoad reſpectus honorum obtineat, eadem evincit juris ratio, niſi dixeris aliquem locupletiſſimum, † atque poſſeſſione majori honoris. Cum divitiæ nonnunquam & 4
uti plurimum hoc ſeculo ſoleant contingere indignos & vilioris famæ homines, ut ait *Purus de Paſſelo in ſua Polit.* præſertim autem avaros homines, quibus vita & fanum pauperum non minus diſplicet, quam agnina lupo, *Joan. de Pined. in Job. cap.24. verſ.4.* Quid, inquit, aliud cum potens lupus eſt canis leo & pauperum innocentium correptum cedere & declinare de via jubet, de quo prædicationem in eam illud S. Scripturæ: Leo et in via & leæna in itineribus, *hoc Eccl. cap.13.* Dives inuſte egit & fremuit, pauper læſus vero tacebat, *&c.* Idem *Joan. de Pined. in Job. cap.21. verſ.7.* dicens: Quòd ab improbis divitiæ acquirantur raptu, rapinis & illicitis ac- 5
quirendi modis, hinc apud *Zach.n.2.* divites ejuſmodi appellantur Querculs Ba-

ſan, quæ non hominibus fructum ferunt ſed porcis nempe glandes & ſiliquas. Et licet divitiæ fidejuſſores dicantur futuris neceſſitatibus & ſine quibus mortua eſt mortalis dignitas, *ut ait. Æn. Sylv. Epiſt.* 71 nec præſumitur divitem, qui nummum pro honore, divitias pro anima æſtimet, facilè dilapſurum, & prædæ quaſi facultates ampliores expoſiturum, &c. cum aliis nemo ſuum jactare velle præſumatur per notiſſima. Reſp. neque hæc ad rem præſentem facere, niſi facultates iſtæ poſſideantur ab homine dignitate & honore eximio, coruſcante per modo tradita, ut ſic binæ illæ cauſæ, *in dict. loc.* 1. conjunctim præſupponantur in cauſis & criminibus exceptis. Ecquid enim divitiæ ſine fama & honore, ſine titulo & conſcientia acquiſitæ? Sanè lachrimæ ſunt proximi & perditio animæ, quæ ſi miſcentur cum bonis bene quæſitis quaſi a tineis conſumuntur & ſunt inſtar cibi cum veneno ſumpti, qui ſuffocet comedentem. *Idem Pined. cap.* 20. *verſ.* 14. Porrò cauſam innocentiæ excipit, *Ulpian. in d. l.* 1. quæ traditio hanc ſententiam habet, non quod innocens capiendus ſit vel carcerandus & poſtea dimittendus non niſi datis fidejuſſoribus, quod abſurdum eſt, & à mente JCti alienum, ſed ſi quidem carcerandus vel incarceratus partim docuerit innocentiam ſuam ſeveq; a delicto ſibi inſimulato purgaverit, non tamen plenè & abſolute, demum committendus ſit fidejuſſoribus, ut ſi quid ſupereſt demonſtrationis vel innocentiæ probandæ, id extra cuſtodiam demum expedire poſſit, *Boſſ. de carcerat. ſidei, n.* 15. Sic
6 M. Cato Major † extra cuſtodiam quadragies ſexies reus cauſam dixit maximis Romanorum odiis & calumniis defatigatus, & toties fuit abſolutus, apud quem plus valuit eloquentia vi [illegible], innocentia, quam acerrimum malevolorum odium, ut refert *Zwinger. in theatr. hiſt. volum.* 3. *l.* 8. *pag. mihi* 835. (4.) quod delicti non capitalis reſpectu reus ſit dimittendus datis fidejuſſoribus, id pauló ante eſt explicatum, *ex l.* 1 *& l.* 3. *ubi Bart. ff. h. t. Boſſ. in tr. crim. in tit. de carcer. fidejuſſ. in princ. num.* 1 *&* 7. nonnulli addunt, (5.) ut nempe re-
7 laxetur carceribus reus nedum datis fidejuſſoribus in diebus ſacris, † quando natale Salvatoris vel dies Reſurrectionis & miſſionis Spiritus S. in feſtis Pentecoſtes celebrantur, niſi ſimiliter propter delicta excepta incarcerati ſint rei, *l.* 3. *C. de epiſc. aud. vide Boſſ. d. loc. nu.* 27. (6.) Porrò quoties reo competit exceptio notoria, quia excludere poſſit dolum, quem pœnæ repoſcunt, aſſerunt Dd. datis fidejuſſoribus reum eſſe relaxandum, *Ang. in l. reos, C. de accuſ. Boſſ. d. loc. num.* 18. *Aretin. in c. veniens de accuſ. ubi ait. quod hæc ſententia communiter ſit recepta, gloſſ. in c. cum olim ext. de re judicat.* in tantum ut ne-
8 dum judex † pati debeat, quod exceptio notoria devolvatur in judicium, *c. quoniam, de fil. preſbyt.* (7.) Si reus opponat exceptionem, quæ impediat litis ingreſſum, ut (1.) tu accuſator jus accuſandi non habes, calumniator es, &c. (2.) vel cum juriſdictio judicis dicentis oppugnatur, ut tu judex incompetens es, &c. (3.) Si allegent reus exceptionem rei judicatæ, ut cum proponit, fui

pro

pro delicto cujus nunc arguior, alias dimiſſus, *vide Boſſ. d. loc. n. 16. 19 & 20.*
Sed hactenus de primo membro hujus capitis quantum ſatis: nunc de
cautione ipſa nonnihil dicemus. Præſtari autem ea debet juxta ſtilum & nor-
mam conſuetam cujuſque judicii, nec non concipienda pro cauſæ qualitate,
ut ſi crimen eſt atrox & exceptum rigoroſè & exquiſitè requiratur, nam ubi
periculum eſt majus cautius ibi eſt agendum per notiſſima: Sin haud nefan-
dum & ſcandaloſum fuerit, cautio remiſſior recipiatur, ita verò utrobiq; ca-
vendum, ſic proſpiciendum eſt, ut ſatisfiat SS. juſtitiæ, reusq; quoties requi-
ratur, ſiſti queat, hic eſt finis & ſcopus cauſæ juxta quem dirigẽdi ſunt greſ-
ſus & actiones. *Bal. conſil. 105 volum. 1.* non cauſa impulſiva ſed finalis eſt ſpe-
ctanda, *ait Menoch. l. 1. conſil. 41. num. 16.* Notatum cumprimis hic eſto: Quod
uti in delictis non capitalibus regulariter admittuntur ejuſmodi cautiones fi-
dejuſſoriæ, per ſupra deducta, *ex l. 1. & 3. ff. h. t.* Sic haud neceſſe fore, nec in-
cumbere fidejuſſori, † ut corpus ſanguinemque, cujus nemo eſt dominus, 9
l. liber homo, ff. ad L. Aquil. proſtituat vel hypothecæ loco offerat pro reo re-
laxando, ſed ut certam nummorum vel bonorum quantitatem ſolvat, ſi quod
promiſit, non præſtiterit, uti cautiones pœnales quoq; in civilibus ſunt fami-
liares & communes ſtipulationibus, hinc fidejuſſores ſolvendæ pœnæ cauſa
rectè recipiuntur, *l. 3. ff. qui ſatisd. cog. l. 1. & l. 2. ff. ſi ex nox. cauſ. agat. l. 8. §. ſed*
et ſi, l. ſi [illegible] pro eo, §. fin. l. ſi à reo, §. fin ff. de fidejuſſ. neq; enim fidejuſſio impe-
dire ſed promovere potius debet pœnæ executionem, intellige autem non
capitalis juxta antedicta, *l. 70. §. fin. d. l. 8. §. ſed et ſi, ff. eod.* imò æquè bene ſa-
tis fit de hac pœna per fidejuſſorem ac ſi excutiantur bona ipſius principalis,
rei, *l. 70. §. fin. ff. de fidejuſſ.* qui ſiquidem dilapſus eſt vel ſolvendo non eſt, utiq;
magis proviſum eſt accuſatori vel fiſco de ſolutione pœnæ ſive mulctæ, quin
quod maleficii coercitio eo citius & facilius ſit executionem cõſecutura, cum
nihil interſit actoris vel fiſci, uter mulctam vel pœnam illam pecuniariam
percipiat a fidejuſſore vel à reo ipſo, *l. 23. l. 53. ff. de ſolut. dict. leg. 70. ff. de fi-
dejuſſ.*

Iſtud quoq; meminiſſe oportet, ut quoties carcer † loco pœnæ eſt ad- 10
judicatus rei, non cuſtodiæ, rariſſimè vel nunquam datis fidejuſſoribus rela-
xetur reus, *Bald. in l. 2. C. de exhib. reor.* neque obſtat prioribus quibus dice-
batur non recipiendam eſſe fidejuſſoriam cautionem in cauſis, quæ mortem
naturalem infligunt, cum nemo ſit membrorum ſuorum dominus, *c. cum ho-
mo, 23. q. [illegible] Bald. in [illegible] num [illegible] C. ne fil. pro patr. Hippol. de Marſil. in tr. de fide-
juſſ. num. 2[illegible]6. & ſeqq.* (1.) Quod delinquendo reus ſeſe aſtringat ad pœnam,
t. t. inſt. de obligat. quæ ex delict. naſc. &c. Quòd ergo fidejuſſor [illegible] tum quod
par ratio ſit obligare ſe promittendo vel delinquendo, *§. 1. d. tit. inſt. de obli-
gat. quæ ex delict. naſc.* defendit hanc ſententiam, *Alber. de Roſat. in ampliſſi-
lo volumine de ſtatut. quæſt. 51* (2.) Adducitur ſimile de cuſtode † carceris, 11

qui ſi reum dolo malo dimittit, pœna capitali plectitur, *l. milites, l. pœnalis l. fin. ff. de cuſtod. l. 4. C. eod.* At qui fidejuſſor ſi nullus eſt cuſtodia, in cujus [illegible] cuſtodiam traditur reus relaxatus. Parium [illegible] idem eſt judicium, *Eber[illegible] top. in loc. a pari.* [illegible]) allegantur exempla probabiliora, *ex Haſlicarn.* [illegible] quibus demonſtratur obſides ſæpenumero occiſos fuiſſe, qui non [illegible] pro fide ſociorum tenebantur, & ſi fide fracta demum plectebantur. Sic App. Claudius trecentos obſides una vice in forum adduxit & ſpectante populo virgis cæſos ſecuri percuſſit. Et apud Livium Tarentinorum obſides virgis cæſi [illegible] Saxo Tarpejo fuerunt dejecti.

Reſp. ad 1. Quod rei delinquentes per quandam juris neceſſitatem [illegible] cantur ſeſe obligare ad decreta pœnarum, quia jus red[illegible] in [illegible] etiam in [illegible]libus, quò ſpectant trita illa juris brocardica: homicidam, quod fecerit, expectare debere, & pœnas ſuos tenere authores, *l. [illegible] C. de pœn.* Deinde non eadem delicti, quæ contractus ratio eſt, prout ex alieno flagitio innocens puniri non debet, *l. crimen, ff. de pœn. l. unic. ff. ſi pend. app. mors interv.*

Ad 2. Reſp. Quod commentarienſis plectitur ob fugam vel [illegible] nem rei, id propriæ culpæ vel dolo adſcribat, neceſſe eſt, qui in ſe non [illegible] vavit noxam vel pœnam alterius a quibus ut diverſis hic male infertur, *l. 11. ff. ad L. Aquil.*

Ad 3. Reſp. De obſidibus id ſic fuiſſe receptum quò in fide contin[illegible] gerentur ſocii, quæ exorbitantia ad conſequentias trahi non debet, *argum. l. 1. ff. de ll.*

Portò non audiendi hic ſunt, *Menoch. de arb. jud. caſ.* [illegible]; *num.* [illegible] *Gail. de contr. & committ. ſtipulat.* qui exiſtimant mero arbitrio judicis [illegible] committendum, an & quando rei datis fidejuſſoribus ſint relaxandi etiam in cauſis capitalibus, allegantur, *l. 1. ff. de cuſt. & exhib. reor.* ubi generaliter videtur committi judicis arbitrio, an reus ſit incarcerandus vel relaxandus [illegible] tâ cautione, necnon *l. [illegible] ff. eod.* Reſp. ad 1. Quod textus ſit planus [illegible] modo arbitrium [illegible] comparatum & informatum eſſe debeat, ſubjicit [illegible] hoc autem &c. quæ diverſativa ſeparat arbitrium à cauſis expreſſis [illegible] ſubintret, id eſt arbitrabitur judex, niſi criminis atrocitas aliud [illegible] &c. [illegible] in genere dici ſolet: Quod in arbitrarius † judex ſtatuere debeat [illegible] [illegible] veritorum, *[illegible] de Marſ. in l. quæſtionis [illegible]* [illegible] *ad l.* [illegible] Quod ubi flagitium quodvis capitale † [illegible] minime poteſt delicta quoque minora, uti homo liber [illegible] [illegible] JCtus ejuſmodi crimen, quod in homine libero capitale [illegible] rectè dicit non indefenſum relinquendum reum, qui non [illegible] gebat, ſed Domino [illegible] ſervum [illegible] dum, ut [illegible] Quapropter nihil [illegible], *l. 1. controverſiarum.* Nec præterea [illegible]

vere quod? Cum in l.3. ff. eod. ait: *Propter grave demum ſupplicium irrogandum, etiam carceris pœnam ſuſtinere reum debere.* Ergò concludit *Gœdd.* in delictis non admodum gravioribus & exceptis ſolummodo non recipiantur fidejuſſores ut homicidii, furti, prout pœnam capitalem producit, relaxandus eſt reus ſatis fidejuſſoribus juxta arbitrium judicis. Reſp. Quod Ulpian. comparative loquatur reſpectu criminum non capitalium, quemadmodum in l.1. quoque, us fere utitur phraſiologiis, nec dubium ſic intellectum ſe ſe aliter voluiſſet, excepiſſe eum crimina excipienda, ubi vero lex non diſtinguit, perducum eſt hominis diſtinctionem admittere, quia ſine lege loqui erubeſcimus, *Nov.* 18 *in l.1 §. generaliter. ff. de leg. præſtand.* tertium membrum hujus capitis eſt, ad quid tandem teneatur fidejuſſor? Ubi (1.) notandum eſt, quod fidejuſſor pro reo vulnerante nō tenetur ſiquidem mors demum ſequatur & vulneratus moriatur. *Spec. de fidejuſſ. §. 1. verſ. ſed pone Bart. in l. fidejuſſores. ff. de fidejuſſ. Jaſon in l.1. ff. de in lit. jurand.* (2.) Quod fidejuſſor non teneatur in ſecunda inſtantia reo abſoluto in prima inſtantia, *argum. l. fin. ff. de pact. Angel Aretin in tr. crimin. in §. pro quib. ſ. fidejuſſit ubi argutiſſimus Aug. Ariminenſ. in ap. ...* (3.) Si pactum ſit inter hunc juſſorem & reum, ut fidejuſſor certo tempore ſtet pro reo. Judex tenetur recipere fidejuſſorem æque idoneum priori, per regulam. Quod id ut facile ſit concedendum. Quod tibi non nocet & alteri prodeſt, *l.2. ubi Bart. ff. ſol. matr.* (4.) Quod fidejuſſor liberetur quoties reus mutat forum, ut exempli gratia ſi Laicus Clericus factus fuerit, *l. ... ff. ... rat. diſtr. l. quiſquis, C. de Epiſc. & Cler.* hinc eſt, quod laicus delinquens clericus deinceps factus non poſſit coërceri à judice laico, *Bart. in l. 1 ... pœn.* modo tamen tranſabit in ... in genere poſt patrata flagitia ſe emancipent ordinibus, *Bart d. loc.* Neq; enim maliciis hominum indulgendum eſt, fur vel homicida enim, quod facit, exſpectet, & ordo clericatus ne ſit flagitioſorum aſylum, diſciplinæ publicæ iuadet vigor & integritas. Lamentatus jam olim ipſe eſt Salvator, quod domus ſua non orationis domus permanſerit, ſed in ſpeluncam latronum degeneratit, *Lucæ cap.19.* (4.) Quod fidejuſſor ... reo dilapſo allegare poſſit nullitates proceſ- 14
ſus & cauſæ ipſius in juſtitiam reiter ... caprto reo. Qui quæ exceptiones reo competunt eædem quoque haud denegantur fidejuſſori æquiſſimum eſt. Qui ſi primo ... & ... cenſetur & habetur pro eadem perſona, *l. ſi enim, ff. ſi quis cautionem ... termini habetur deciſio l. ſancimus, §. ſed ſiquidem, C. de fidej ... reſtituatur, ... exhibendi, §. item ſi quis, ff. ne quis eum . ubi dicitur: Quod eximens ... qui non ſit debitor, cadat in pœnam edicti.* Reſp. diſtinguendum eſſe inter fidejuſſorem & eximentem, hic in dolo & culpa eſt, quia deliquit eo ipſo, quod eximeret reum, hic nihil admittit dilapſo reo, *vide Jaſon. in l.2. ff qui ſatiſd. cogant.* (5.) Quod fidejuſſor ſimpliciter ſtipu- 15
latus præſentare reum liberetur unica exhibitione, *Dd. paſſim in l.2. ff. qui ſatiſd.*

tiſd.cog. Ludov. Rom. in rubric. C. de Carbon. edict. hinc vulgaris Dd. theorica: Quod ſermo ſimpliciter prolatus de primo & unico intelligatur actu, [illegible] *fin ff. ut in poſſ. leg. Joan. Goedd. in l. 89. §. 1 ff. de V. S.* Secus erit, ſi toties quoties eum offerre dixerit, quo pacto non niſi ad binam oblationem [illegible] nempe ut infinitas evitetur, nec ad duriorem compellatur fidejuſſor conditionem, quam æquitas requirit, *argum. l. fideicommiſſa, §. 10. ff. de [illegible] in l. ſi [illegible], ff. de dam. infect. num. 1.* nonnulli ſentiunt, quod fidejuſſor [illegible] ſeſe obligarit ad omnem comparendi vel ſiſtendi caſum uſque ad ſententiam definitivam, *Bart. in l. 4. ff. de cuſt. & exhibit. reor. Marſil.* [illegible] vox (quotieſcunque) majoris adhuc eſt potentiæ, quæ fidejuſſorem ad hoc compellat, ut etiam poſt ſententiam teneatur præſentare reum, *argum. l. quid*
16 *ſi nolit §. ſi autem. ff. de edil. edict.* alias notandum eſt, quod fidejuſſio † hæc ſcriptis ſit inferenda, nam deficiente eâ, exſpirat [illegible] quatuor menſibus, *l. ſi fidejuſſor C. de fidejuſſ. ubi Bart. Spec. de accuſat. §. ſeq.* [illegible] *Marſil. d. loc. num* 141. (6.) Quod fidejuſſor non teneatur reo ob idem delictum captivato, eoq; erumpente, *argum. l. 3. ff. de cond. inſt. l. 3. §. mandati.* Facit huc regula civilis. Quia ſolutione ejus quod debetur, omnis tollitur obligatio, *pr. inſt. quib. mod. toll. oblig. l. ſolvendo, ff. de negot. geſt.* aliqui extendunt hanc regulam ad eum caſum, ut licet ob aliam cauſam capiatur denuo reus, liberetur tamen fidejuſſor ſiquidem judicem compellaverit & proteſtatus fuerit, rogans eundem, ut modo captivum pro omni caſu habeat præſentatum, nec ſinat eum delabi, *auth. ſi captivi. C. de Epiſc. & Cler. C. Neſennius, ff. de neg. geſt. diſſentit. Angel. in l. 2. ff. de cuſtod. & exhibit. reor.* (7.) non tenetur fidejuſſor quoties is procuravit ut reus denuò incarceraretur, quod prudentiores ſolent proſpicere, captus verò auffugeret etiam culpa cuſtodis [illegible] interveniente, *l. fin. §. 1. ff. de cuſtod. & exhibit. reorum*, uti de duobus carcerum cuſtodibus receptum eſt, ut ſi culpa ſocii auffugiat reus, alter ille haud teneatur,
17 *d. l. fin. Marſil. d. loc. num.* 143. (8.) non tenetur fidejuſſor † qui intra certum tempus vel terminum exhibere reum promiſit, ſiquidem reus vel fidejuſſor interea non fuerint requiſiti, *Paul. de Caſtr.* [illegible] *pro ſeſe allegat. Hip. de Marſil. in tr. de fidejuſſ. num.* 144. cum promiſſio de præſentando illam in ſe contineat conditionem hanc tacitam: Si reus vel fidejuſſor fuerit requiſitus imò, quod ſi intra menſem exhibere fidejuſſor [illegible] initium menſis [illegible] tempore requiſitionis, *argum l. ſi decem* [illegible] *§. qui ſatiſd. cog.* [illegible] communi. Quod dies interpellet pro homine bene eſt, & pro hac ſententia pugnat, modo ut diximus. [illegible] præſupponitur, quod non niſi a die requiſitionis terminus ille currat & menſe poſthac [illegible] demum mora committatur, quæ juris [illegible] habet rationem, ne fidejuſſor importunitate offendat judicium. Quapropter [illegible] *Marſil.* [illegible] ſurdum eſſet dicere, quod fidejuſſor deberet præſentare non requiſitus [illegible]

præſen-

præſentatio perſonæ ſoleat fieri propter aliquid explicandum circa cauſam per curiam. & ipſe fidejuſſor antequam præſentaret ignorat an præſentatio ſit accepta curiæ, ſicut videmus in operibus debitis aliberto, quia dies earum non cedit antequam fuerint petitæ, *l. ſi quis, § judic. ff. de oper. libert. judicium de operibus, ait Ulp. d. loc. tunc locum habet, cum operæ præterierint* Præterire autem non poſſunt, antequam *incipiant cedere. & incipiunt, poſteaquam fuerint indictæ.* Porrò abſurdum eſt, ut *Bart. in l. ſi rō ſortem, §. libertus, ff. de condict. indeb.* quod aliquis faciat ſervicium perſonæ meæ antequam velim, &c. *argum. l. §. magiſtr. ff. de magiſtrat. conven.* ubi quidem imputatur † magiſtra- 18 tibus, ſi tutores non dederint minoribus, qui inde jacturam ſunt paſſi ſuarum ſubſtantiarum, addit tamen textus ſi fuerint requiſiti, & non dederint tutores vel conſtituerint curatores bonorum. Porrò ſi ex ſtatuto pœnam meretur magiſtratus, qui non animadvertit in facinoroſos, certè inculpabilis erit hactenus, dum eidem non fuerint denunciata crimina, *argum. d. l. 1. Marſil. d. loc.* Prout receptum eſt jure quoad judicem, qui intra certum tempus vigore ſtatuti vel pragmaticæ, cujuſdam ſanctionis tenetur jus reddere partibus, ne in pœnam ſtatuti cadat, ſiquidem non fuerit ſubinde requiſitus, *Barbat. in rub. de accuſat. & c. de cauſis, de off. deleg. in 6.* (9.) alias fidejuſſor † liberatur reo 19 mortuo, *Bart. in d. l. ſi deceſſerit & l. ſi verò, ff. qui ſatiſd. cog.* nec obligatio fidejuſſoria tranſit ad hæredes paſſivè, *gloſſ. in §. fidejuſſor. Inſt. de fidejuſſ.* niſi obligatio etiam ſit concepta in mulctam vel pœnam pecuniariam, ut quia fidejuſſor ultra factum de præſentando reo ſpopondit quoque ut diximus, reſpectu mulctæ, adeò ut quod judicatum ſolvi ſeſe unà obligaverit, *vide Marſil. d. loc. nu. 161.* (10.) liberatur nec tenetur fidejuſſor, † qui pro famulo vel mi- 20 niſtro aliquo interpoſuit ſuam fidem, eo delinquente & dilabente, in caſu quo dominus forte furtum paſſus, accuſat famulum, contumacia citati enim non parit contumaciam, niſi fidejuſſit ille de ſolvenda omni cōdemnatione *Bart. in l. cum filius ff. de V. O. Ægid. Boſſ. in d. tit. de incarcer. fidejuſſ. num. 58.* Hoc ſciendum eſt, quod contra fidejuſſorem † de præſentando vel ſiſtendo in ju- 21 dicio, procedatur via paratæ executionis ſine omni ſtrepitu judiciario, *Idem Bart. in d. l. ſi quis reum in fine, ff. de cuſt. reor. Jaſon. in l. 2. §. fin. ff. qui ſatiſd. cog.* jus idem quoque receptum de fidejuſſore, qui de judicato ſolvendo fuit ſtipulatus, *l. ubi Bart. & Dd. ff. de judic. ſolvendo* qui appellare non poteſt, quando ſententia contra principalem lata tranſiit in rem judicatam, aliter in fidejuſſore mutuo jure eſt conſtitutum, *l. à ſententia ubi quoq., Bart. num. 2. ff. de appellat.* Alias non liberatur fidejuſſor, qui reum adpromiſit pœnam, ut incurrat eam ſi non ſiſterit reum, coercetur enim officio judicis juxta ejus arbitrium, *l. 2. ff. ſi quis caut. l. ſi quis reum, ff. de exhibend.* quæ punitio in mulcta ſaltem conſiſtat, cum ob ſolam † contumaciam rarò vel nunquam infligatur 22 pœna corporalis de jure civili & canonico, *Bald. in l. qui crimen, C. qui accuſar.*

 non

23 *non poſſ.* ad evitandam † verò mulctam licet fidejuſſori purgare moram, [illegible] quas juſtas excuſationes preferre poſſit, *l. ſancimus, C. de fidejuſſ.* quamquam juramento interveniente fidejuſſiſſet, *argum. c. ex literis ext. de* [illegible] *Ægid. Boſſ. d. loc. n. 66.* Quare fiſcus ſit cautus, *ait Idem d. loc.* faciendo, [illegible] renuncietur, *d. l. ſancimus*, & aliis beneficiis, quæ fidejuſſoribus competunt [illegible] fidejuſſor liberatur reſpectu quantitatis promiſſę quoad mulctam, excedentis taxationem jure definitam, *l. eos, C. de modo mulctand.* ubi ſimiliter [illegible] eſto: Quod fidejuſſio hæc fieri debeat fiſco vel jus dicenti non parti, *l. ſtipulatio, ubi Jaſon. §. alteri, ff. de V. O.*

CAPUT XI.

DE VRPHEDIS.

SUMMARIA.

1. *Cum reus fidejuſſores dare nequit admittitur ad juratoriam cautionem.*
2. *Vrphedæ quid ſit.*
3. *Cur Vrpheda requiratur?*
4. *Homines [illegible] ſoleant eſſe vindictæ cupidiſſimi.*
5. *Quid jurare teneantur hi qui Vrphedam præſtant.*
6. *Vrphedam frangens capite pleƈtitur.*
7. *[illegible] do puniatur relegati, qui [illegible]*
8. *An perpetua relegatio infamet?*
9. *Pœna relegationis eſt omnium antiquiſſima.*
10. *Quid ſi minatus ſit in cuſtodia, [illegible], qui Vrphedam noluit præſtare?*
11. *Quid [illegible]*
12. *An conatus [illegible] puniri [illegible] reantur?*
13. *Conſilium [illegible], non [illegible] puniendum?*
14. *Quidam reus [illegible] ſub Vrpheda ſit dimittendus?*
15. *An reus præter Vrphedam teneatur præſtare fidejuſſoriam [illegible]?*
16. *Iudex non [illegible] ſententia parti [illegible] dicatu.*
17. *Fidejuſſore ſemel adprobato non eſt quærenda cautio idoneior?*

1 CÆterum ubi fidejuſſoria cautione, & deficiente hac, quoties reus [illegible] invenire nec exhibere poteſt fidejuſſores, demum de [illegible] cautione juratoria præſtita, *auth. generaliter, C. de Epiſc. & Cler.* [illegible] *re non valet juratoriam* [illegible] *cautionem* [illegible] [illegible] *milet.* Si quando reus ab [illegible] vel inquiſitione abſolutus relaxatur & dimittitur ſub cautione juratoria, quam in vernacula lingua Urphedam appellitamus, *videre oport.* [illegible] *Car. V.* [illegible] *art.* [illegible] *jur. Saxon.* [illegible] *hæc eſt* [illegible] *lib.* [illegible] Mit der Orfate [illegible] oder ſchwere [illegible] da ſchall he [illegible] [illegible] hæc vocula Vrphed [illegible] ein Vrphed [illegible] oder verſchlich [illegible] unde etiam [illegible] ipſa

juram-

juratoria † cautio, quæ in ſeſe comprehendit promiſſionem de non vindi- 2
canda injuria carceris, dicatur Urphed. Quæ ſtipulatio † non tam in accu- 3
ſatoris, quam judicis ipſius reſpicit favorem, quò ſcilicet ſecuri ſint adverſus
facinoroſos & [illegible] tioſos homines, qui omnium ſolent eſſe vindictæ † cu- 4
pidiſſimi, *vide Camer. t. medit. hiſt.* 84. Quibus, ut Galli loquuntur, La ven-
geance eſt une choſe plus dulce & ſavoureuſe que le miel ni que le ſoucre. Qua-
propter Oreſtes ulciſci cupiens Menelaum patruum apud Euripidem ſic ait:
Ego verò omninò expirans animam meam, faciens quiddam cupio in meos
inimicos [illegible], ut viciſſim perdam eos, qui me perdiderunt: ingemiſcant ve-
ro, qui & me fecerunt miſerum.

Jurare itaque coguntur † carcerati jam dimittendi, quod nō tam ipſi vin- 5
dicare nolint, ſi quam carceris ſentiant injuriam ſibi illatam, quam procurare
& providere [illegible] aliquam liberorum proximorum amicorum, idem audeat
attentare, &c. Sanè cum quiſq; ſuæ fortunæ, ut loquimur, eſt faber, ſibi im-
putabit reus, qui dum malorum ſocietati innodatus, vel malis moribus cor-
ruptus, vitam degere inordinatam & culpabilem atq; pravas ſuſpiciones ho-
minum in ſeſe derivare cœperit, cum viro bono congruat non tam ab ipſo
flagitio, quam ejus ſuſpicione eſſe alieniſſimum, *Steph. ad Conſt. Crim. art.* 61.
Gobler. ibid. art. [illegible]. Quam intelligentes cauſam & ſcandala hinc naſcitura
divi Impp. [illegible] tare quoque pœnam in perjuros & perfidos ejuſmodi haud
immerito cenſuerunt, adeo ut ex crimine capitali quis fuerit accuſatus &
captus, ſi quidem Urphedam fregerit, † pœnam capitis luat, *Conſt. Crim.* 6
Carol. V. art. 108. Sin ob non capitale delictum ſit incarceratus & dimiſſus, ut
perjurus plectatur, *d. conſt. art.* 108. *& art.* 175. Cumprimis autem hic articulus
ſpectat ad relegatos, qui juratâ fide ruptâ revertuntur in territorium ex quo
relegati ſunt, † qui [illegible] amputatione manus vel digitorum aliquot 7
puniuntur, [illegible] ſecundò redeant, ſicque juramentum duplex violent,
ultimo ſupplicio afficiantur, [illegible] Helmſtadienſes reſpondiſſe refert,
[illegible] Bull ad Conſt. Crim. art. 108. quando vero ad tempus certū relegati ſint rei,
& reverſi in provinciam [illegible] dispoſitionem, *l.* 4. *ff. de pœn.* relegantur in per-
petuū. ſin relegati in perpetuum redeant, deportātur, deportati redeuntes ul-
timo ſupplicio [illegible]. Alias relegati infames non fiunt, niſi cauſa delicti
infamiam [illegible]. Quod cauſa relegationis non re-
legatio infamet, *l.* [illegible] *nu.* [illegible] *de his, qui not. infam.* non pau-
ci exiſtimant, quod relegatio perpetua † infamiam reo infligat, *vide Weſenb.* 8
conſil. [illegible] *in fine.* Nec deſunt ex multis, [illegible] relegationis pœnam omninò ab-
rogandam eſſe ſtatuunt & multis argumentis hanc ſententiam defendere ſt-
tagunt. *vide Theodor.* Reinking *de Regim. Secul. claſſ.* 1. *lib.* 2 *cap.* 8. *num.* [illegible]
ſeqq. Quanquam relegationis & exilii pœna † ſit antiquiſſima, [illegible] 9
primi noſtri parentes poſt lapſum ſunt pleċti, 3. *Geneſ. verſ.* 24. Sic Cain poſt

 com-

commiſſum fratricidium exulare coactus eſt, 4. *Geneſ. verſ.* 12. & [illegible] apparet *in lib. Iudic.* à fratribus ſeparatus & exul factus eſt in terra. [illegible] Rex David relegavit filium Abſolon ex aula ſua in domos privatas, &c. imo [illegible] ſacris & in propheticis ſcriptis hac de re extant monumenta & exempla infinita.

Ad rem & Urphedam redeo, ſed quid ſi dimittendus in carcere vel ex-
10 tra cuſtodiam † effudiſſet minas atrociores, tanta flagrans vindictæ cupiditate, ut periculoſum ſit dimittere ſub cautione reum? Reſp. Aut reus homo vilis & moribus pravus eſt, zu welchem man ſich wol verſehen möchte, daß er den Urpheid brechen und ſich rechen werde / rc. Vel quia antehac per [illegible] extitiſſet, vel contaminatus vitæ & morum turpitudine. Sane fragili committendum ſe, & accuſatorem cautioni, res periculi eſt plena, cum [illegible] animum malignum mutare non ſoleat, §. *fin. inſt. de ſuſpect. tutor.* [illegible] Quamobrem tutius videbitur, rem & cauſam exponere ſuperiori, & [illegible] iudex ſeſe & accuſatorem adverſus pericula conſervare poſſit, ex [illegible] & re-
11 ſponſis prudentiorum requiret. Sin dimiſſus † minitatus ſit vel cœperit inſidiari judici vel accuſatori res eſt expedita, neq; enim dubium eſt, quin hoc ipſo reus Urphedam fregerit, & propter delicta attentata denuo ſit incarcerandus, nec inde remittendus, donec extremum dodrantem perſolverit, *d. Conſt. Crim. art.* 175. & 177. ubi dicitur: Quod delicta hæc vel potius conatus delinquendi ſint criminaliter coercendi, ibi. Item / ſo ſich jemand einer Miſſethat mit ehrlichen ſcheinlichen Wercken / die zu Volnbringung der Miſſethat dienſtlich ſein mögen / unterſtehet / und doch an Volnbringung derſelben Miſſethat durch andere Mittel / wider ſeinen Willen verhindert [illegible] böſer Will darauß etliche Werck / als ob ſtehet folgen / iſt Peinlich zu ſtraffen / *adde l.* [illegible] *l. Cornel. de Sicar.* ubi l. Corneliæ pœna tenetur [illegible] qui cum telo [illegible] ambulavit hominis necandi cauſa, &c. neq; obſtat. Quod cogitationis pœnam nemo patiatur, nec ſententia eorum qui exiſtimant, [illegible]
12 *ad L. Corn. de Sicar.* jam dudum eſſe abrogatam, quia [illegible] † [illegible] non niſi in criminibus exceptis attendatur, [illegible] *Schenk baron. de Tautenberg de feudiz.* [illegible] *tit.* 24. [illegible] *Johan.* [illegible] *feud.* [illegible] 93. & *Petr. de* [illegible] *lib.* 2. *in* §. *homicidium, Petr. Roiz. in decis. Lituan.* [illegible] Reſp. Cogitationis [illegible] neminem reddere rationem teneri, niſi [illegible] judice altiſſimo, qui ſolus eſt ſcrutator renum & cordis, quiq; judicaturus eſt [illegible] & terrena, quæ demum in apricum deducentur in magno illo judicio [illegible] ſuper vivis & mortuis. At voluntatis perverſæ & maligna [illegible] ad forum ſeculare vel Eccleſiaſticum [illegible] ſpectat, cumprimis ubi voluntas prava nocendi ſe exeruerit in motus & ſigna [illegible] de affectus offendendi procul dubio colligitur. Unde [illegible]
13 ſilium † unusquisque non factum [illegible] *de* [illegible] [illegible] debet.

delict. naſcun[illegible] Conſilium corruptoris ad perniciem probitatis ſervi introductum [illegible] pœnalis actio impoſita, quanquam ſi reipſa ſervus corruptus fuiſſet, &c. ubi vides, ait *Melch. Clargius d. loc.* affectum ſi[illegible] effectu ſe[illegible] *puniri, &c. Porro ad l. 1. ſ. 1. ff. ad L. Corn. de Sicar.* reſpondet *Schenck bar. d. l.* [illegible] ubi reprehendit & refutat eorum opiniones, qui exiſtimant ſublatam eſſe legem iſtam, quam ſacratiſſimam appellitat. Sed hac de re alibi diximus [illegible]. Ad deciſionem quæſtionis principalis redeo & adſero præterea Quod ſi incarceratus caſu vel culpa non conſilio † vel proæreſi in reatum 14 fuerit delapſus, & antehac morum laudatorum & vitæ inculpatæ extiterit, nec [illegible] ſit vindictam, illum ſub juratoria cautione omninò eſſe relaxandum, quo præcipuè ſpectat conſtitutio, *d. loc.* ad inſtar rei nondum abſoluti, qui dare [illegible] fidejuſſores, qua de cauſa capite antecedenti in fine. Exiſtimat [illegible] quoq; pro majori cautela etiam teneri † reum dare fidejuſſores, 15 quoties [illegible] ſatiſdationi non ex omni aſſe confidendum judex arbitrabitur, [illegible] in omni caſu, cujus eventus eſt fallax & dubius, quivis quo poteſt meliori modo ſeſe munire & confirmare queat funiculus duplex difficilius rumpetur, ait *Petr. Rebuff. in concord. inter Leon. 10. & Franciſ. reg. Gall. pag. 215.* Quin quod judex vel fiſcus non recipiens † ſatis idoneam cautionem in hoc 16 paſſu [illegible] meritò converti poſſit, non ſecus ac ſi in caſu fidejuſſoriæ cautionis de [illegible] vel ſiſtendo reo, non fidejuſſores ſat idoneos recipiens teneretur [illegible] dies, ait *Ægid. Boſſ. in tit. de Carcer. fidei. num.* [illegible] quod non expectato ſyndicatu, viderim quendam magnum virum cogi ad ſolvendam pœnam, quam promiſerat fidejuſſor tanquam ipſe fidejuſſor non eſſet ſolvendo, *l.* [illegible] *§. magiſtratus, ff. de magiſtr. conveniend. §. Imperatores, ff. de re jud.* [illegible] *§.* [illegible] *tendum, inſt. de ſatiſd. tutor. Boſſ. d. loc.* ſuadet ut quoque [illegible] fidejuſſores ſuſcipiatur, alias fidejuſſore † ſemel approbato, 17 non eſt ulterius quærenda cautio, *l. ſi is a quo, §.* [illegible] *ff. ut in poſſ. legat. Hyppol. Marſil. in l. ſi quis 12. ff. de qq. Bart. in l. qui ſatiſdare ff. de fidejuſſ.*

CAPUT XII.

DE ANNOTATIONE ET CONFISCATIONE bonorum.

SUMMARIA.

1. *Annotatio bonorum* [illegible]
2. *Quomodo in* [illegible] *ſecundo de[c]reto coerceatur reus* [illegible]
3. [illegible] *pacto bona* [illegible] *criminali* [illegible] *applicentur?*
4. [illegible] *cauſarum criminalium hac* [illegible] *habeat*
5. [illegible] *heredibus hereditari* [illegible].
6. [illegible] *ſi das alicui* [illegible] *donatar* [illegible]

facere creditoribus, & portare onus, quod inhæret bonis.

7. *Fiſcus non eſt heres proprie, ſed habetur pro herede.*

8. *Ius deliberandi habet fiſcus.*

9. *An feudum cadat in fiſcum?*

10. *Fiſcus ut privatus tenetur a lite hereditatem.*

11. *Quando fiſco ſit ſuccurrendum beneficio reſtitutionis in integrum.*

12. *Quæ poſſeſſio dicatur civiliſſima?*

13. *Poſſeſſio ficta quæ dicatur?*

14. *An bona futura cadant in fiſcum?*

15. *Cautela traditur hac de re.*

16. *Hieron Moronus licet non operam dederit literis, tamen egregius fuit ICtus*

17. *Quomodo dotem repetat mulier bonis viri confiſcatis?*

18. *Quando agnatis noceat factum vaſalli, cujus bona ſunt publicanda?*

19. *Quæcunque bona non tranſeunt in heredem extraneum, eadem non publicantur.*

20. *An feuda ex pacto & providentia cadant in fiſcum?*

21. *Ius accreſcendi quomodo in feudis locum habeat?*

22. *Non ſubditus non committit crimen læſæ majeſtatis*

23. *Feudum penes avum adhuc conſiſtens non confiſcatur propter delicta nepotum.*

24. *Emphiteuſis Eccleſiaſtica non cadit in fiſcum.*

25. *Quomodo fiſcus vindicare poſſit bona rei, extra fines territorii ſita?*

26. *An bona alienari prohibita cadant in fiſcum*

27. *Fiſcum fallere* [illegible]

28. [illegible]

29. *Princip*[illegible] *ad eminen*[illegible]

30. [illegible] *tenetur actori fiſcali edere ſua* [illegible]

31. [illegible] *probationes non* [illegible] *ex* [illegible]

32. [illegible] *bona ſua indicari fiſco etiam* [illegible] *quæſtione.*

33. *Securitas data debitori a principe non* *extenditur contra fiſcum.*

34. *Fiſcus reſtituitur in integrum ad* [illegible] *probationes omiſſas in cauſa*

35. *Sententia contra fiſcum data* [illegible] *ejus advocato, est ipſo jure nulla.*

36. *Fiſcus ſuccedens privato,* [illegible] *pro privato habetur.*

37. *An fiſcus neceſſe habeat* [illegible] *tarium?*

38. *Bona fiſcalia non* [illegible] *extraordinariis.*

39. *Vendita a fiſco hereditate* [illegible] *hereditarii convenire tenentur* [illegible] *fiſcum.*

40. *Præventio non habet locum* [illegible] *fiſcalibus, quia fiſci* [illegible] *habet judices*

41. *Debitor fiſci non poteſt* [illegible]

42. *An adminiſtrator fiſci* [illegible] *comparans, videatur* [illegible] *pecunia fiſci* [illegible]

43. *Fiſcus tacitam habet hypothecam in bonis Adminiſtratorum fiſci*

44. *Fiſcus tacitam habet hypothecam in bonis debitorum ſuorum.*

45. *An fiſcus* [illegible] *excludat in concurſu creditorum*

46. [illegible] *in pignore contra Andream Gail* [illegible]

47. [illegible] *fiſci?*

48. *Re*[illegible] *abſque ulla interpe*[illegible]

49. [illegible] *pecuniæ* [illegible] *te officio* [illegible]

50. *Regum* [illegible] *tocem* [illegible]

51. *Vir bo*[illegible] *præſumitur facile* [illegible]

52. [illegible] *lia non niſi viris per*[illegible] [illegible]

53. [illegible] *&* *ex* [illegible]

54. [illegible] *ſunt ad* [illegible]

Antio-

ANnotatio bonorum † modus eſt, quo coercetur reus contumax, qui 1
præcedente inquiſitione cœperit latitare ſeque ſubducere luci. Etenim
poſt primam citationem confeſtim judex annotare poteſt ejus bona in [illegible]
tam [illegible] non comparentis, *Damhoud. in pr. crim. cap. 14. Carer. in pr. crim.*
in §. ſextus caſus, num. 7. uti in cauſis civilibus receptum eſt identidem, quod
quoties reus citatus contumax factus eſt, coerceatur † immiſſione bonorum 2
ex primo decreto, *c. quoniam, §. in aliis, ext. ut lite non conteſt. l. conſentaneum,*
C. quom & quand. judex. Gail. 1. obſerv. 60. & Modeſt. Piſtor. in proc. jur. 1. c. 20.
Porro, ut in civili actione contentus demum decretis executorialibus, & ſic ex
ſecundo decreto privatur bonis. *Idem Gail. d. loc. num. 2.* Sic rei actione crimi-
nali [illegible] bona poſt annum a die commiſſæ primæ contumaciæ decre- 3
to judicis [illegible] fiſco applicantur non quidem abſolutè, ſed pro tem-
pore, & [illegible] crimine jam ſuperq; conſtiterit, ne pendente contumacia,
compl[illegible] abſentis & latitantis bona ejus in fraudem fiſci intervert-
tant, [illegible] ſubducant, hinc annotatio hujuſmodi bonorum publica-
tio, [illegible] quodam dicendi genere dicitur, vel præparatio magis ipſius bo-
norum publicationis, *Damhoud. d. loc. B[illegible] in tit. de bon. public.* Uoi notatum
eſt. Quod [illegible] hæc annotatio locum habeat in caſibus & cauſis † 4
criminalibus, [illegible] non pœna [illegible] perſonis afflictiva ſed confiſcatio & bonorum
[illegible], *Damhoud. d. loc.* quanquam utplurimum in quibuſvis re-
rum criminalium controverſiis, ex cauſa contumaciæ, bonorũ annotati[illegible] fieri
ſoleat, [illegible] & evocandos reos, *Damhoud d. loc.* Quod verò delicta
attinet, ubi præter [illegible] ſupplicium bona reorum addicantur fiſco. Jure
expeditum eſt ea [illegible] inquiſitionis vel accuſationis inſtitutæ eſſe deſcri-
benda & pro [illegible] ſequeſtranda, vel ſub cautione fiſco concedenda, donec
de veritate delicti [illegible] liquidò conſtiterit. Qua annotatio vel
deſcriptio hanc [illegible] ne fiſcus cum eidem jam pleno jure bona rei
adjudicata fuerint, ultra vires bonorum teneatur. Fiſcus † quippe creditoribus 5
ribus hereditariis non aliter, uti heres qui cum beneficio inventarii heredi-
tatem adit, obnoxius eſt, *l. [illegible] ad l. Jul. de vi public.*
hinc eſt, quod Princeps † aliis [illegible] bona [illegible] vel fiſcum devoluta trans- 6
[illegible] dicatur in [illegible] jura & actiones, quæ paſſivè inhærent
[illegible] *p. 44 [illegible] ſolum ſi [illegible] imo in quemlibet*
alium [illegible] bona [illegible] ex diſpoſitione legis, tranſcendunt
quoque [illegible]. Nec tamen fiſcus † 7
eſt heres propriè [illegible] vel loco heredis, *d. l. 3. 1. 6. §.*
quia fiſcus non ſuccedit [illegible] bona confiſcantur, ſed in
bonis potius, quæ fiſco jure cedunt. *Idem [illegible] l. inter eos, §.*
ff. de fidejuſſ. hinc bona confiſcanda vel confiſcata [illegible] poſſunt here[illegible]
cum viventis nulla ſit hereditas, per [illegible] imò jura futura non [illegible] ad
fiſcum,

fiſcum, *l.* 22 § 5. *ff. mandati. Bart in l.* 1. *in fine, ff. de bon. damn.* Alias jus deliberandi † tranſit in fiſcum, *l.* 19. *Cod. de jur. delib* An feudum † ſit bonorum
8 randi † tranſit in fiſcum, *l.* 19. *Cod. de jur. delib* An feudum † ſit bonorum
9 confiſcationi quæri ſolet? *vide Boſſ. d. loc. num.* 21. qui negat niſi feuda etiam gant hęreditaria inter bona delinquentis, non pauci etiam ſtatuunt bona publicatis non auferri legitimâ liberis niſi in cauſa læſæ majeſtatis, *l.* 5 *C. ad L. Jul. Majeſt. ubi Dd.* neceſſe verò habet fiſcus ut in caſu ſibi delatæ vel acqui
10 rendæ hęreditatis, ut privatus † hæreditatem adeat & apprehendat poſſeſſionem, *gloſſ in l.* 52. §. 9. *ff. pro ſoc. Alex in l.* 9. *ff. ſol. matr. Ægid Boſſ. in tit. de bon publ. num.* 26. *allegans Laudenſ. de fiſc. verſ.* 63. ubi cum Dd communiter eò tranſeunt, quod licet dominium ipſo jure ad fiſcum devolvatur, poſſeſſio
11 tamen non acquiratur niſi apprehenſione, ſed quid ſi fiſci patronus † per ignorantiam vel negligentiam intermittat prehendere poſſeſſionem, hærede defuncti aliove ſeſe intrudente & acquirente in poſſeſſionem? R. Fiſco ſubveniendum eſſe beneficio reſtitutionis vel alio quodam interdicto poſſeſſo-
12 rio, quæ, demum acquiſita poſſeſſio † facto legis vel decreti ſolet dici civiliſſima, *Jaſon. in l.* 1. *ff. de acquir poſſ & in l ſi is qui emtore, ff. de uſucap.* intellige ante acquiſitionē beneficio legis vel judicii, *Weſenb. in exempl. ad Schneidewin in Inſt. de interdict. paſſim*, quæ haud abſimilis eſt poſſeſſioni fictæ, †
13 cujus meminit, *l. quiſquis, C. de don. Cujac.* 19 *obſerv. cap.* 18. *Carolus Theſ. concluſ.* 627. *in verbo donatio.* Cæterum bonis publicatis ſiquidem nova quæ
14 dam hereditas † deferatur reo, ea eximitur à publicatione nec eſt obnoxia confiſcationi, ut ſi bona rebellis vel banniti cadunt in commiſſum rei ejuſmodi, qui poſthac ſuccedit defuncto patri, *Jaſon in d. l.* 1. Quapropter cautelam hanc † affert *Boſſ d. loc. num.* 28. ut nempe Fiſcalis ſuſpendat condemnationem rei eamq; differat uſq; poſt mortem parentis, &c. Nec tamen in præjudicium fiſci proſcribendus vel proſcriptus juri adeundi hereditatem renunciare poteſt. gratiâ coheredum in præjudicium & fraudem fiſci, *argum. l. qui autem, ff de his, quæ in fraud creditor. Boſſ. d. loc.* ubi ait: Quod hanc cantelam
16 in ore habere ſit ſolitus Hieron Morotius, † qui beneficio rationis & judicii naturalis maxime excelluerit, ibi qui ex intellectu ſibi à natura dato, magis ſciebat leges, & earum mentem [illegible] ſtudio, quàm alius Jureconſultus licet doctiſſimus bene ſtudendo.
15 lam hane † adfert *Boſſ d. loc. num.* 28.

Diximus fiſcum quaſi heredem eſſe; Exinde elicitur, quod fiſcus non niſi deducto ære alieno ſuccedat, niſi in fraudem fiſci ſimulata & clandeſtina contrahantur nomina, vide prolixe *Boſſ. d. loc.* hinc mulieri non aliter dos debetur ex bonis mariti proſcripti vel aliter facultatibus lapſi, quæ in fiſcum ca-
17 dunt, † quam ſi de vera dotis numeratione conſtiterit neque enim ſola mariti confeſſio attenditur, *Campeg. in tract. de dote* q 72 *Jaſon in* § *fuerat inſt de act.* Sic donationes conjugum non revocantur ſubſecutâ proſcriptione & publicatione bonorum, *l. cum quæ, C. de don. inter vir. & ux. l. ſed etſi, ff. de donat.*

modo

modo fraus & dolus malus abſit, per antedicta, uti nec donationes filiofam. factæ a patre, ſiquidem donatio revocari poſſit à donatore, *l. ſi filius, C. de bon. proſcript.* diximus etiam ſupra nonnihil de publicandis feudis, ubi hoc annotandum reſtat, quod quoties delictum vaſalli, unde proſcriptio vel bannum infligitur, cedit ad injuriam & perniciem Domini, vaſallus † quoq; feudo 18
privetur idq; ad dominum redeat excluſis agnatis, confiſcatis ſubinde bonis ejuſdem aliis. *c. imperialem, §. illud [illegible], de prohib. feud. alien. per Freder. ubi Feudiſtæ commun. ego in meis [illegible] lib. cap. fin.* verbi cauſa. Comitis quidam ſubditus committit crimen, quod vel in Reipublicę Cæſaris Regis vel Principis vergit in perniciem vel injuriam, quamobrem reus bonorum publicatione mulctetur, Sane Comes a quo feuda recognoſcit & tenet reus: non ſpoliari debet ſuo jure, ſcilicet quod eidem ſartum tectum conſervatur, quin magis augetur [illegible] lucratur & feudum pleno jure recuperat, neq; enim plecti debet, qui nihil admiſit, cū pœnæ ſuos tenere debeant authores, *l. ſancimus C. de pœn.* & nemo odio alterius ſit prægravandus, *c. non debet de R. J. in 6. l. non debet & l. factum cuiq; ff. eodem, l. 1. ff. de alien. judic. mut. cauſ. fact. l. de pupillo. §. plurimum, ff. de nov. oper. nunc.* bona cætera eque allodialia quantum attinet ea procul dubio in fiſcum cadunt domini ſuperioris quem reus [illegible] offendit, *FF. in d. imperialem*, quadrat huc regula trita: qui placuit ea, † quæ non tranſeunt ad heredem extraneum, non venire in 19
publicationem bonorum, *Roſ. d. loc.* At fiſcus vulgariter loquendo eſt loco extranei heredis, *[illegible] l. 1. C. de bon. libert. in verbo. bonis. & ibi Bart. num. 1. & & in l. ſi rurali bertorum, num. 4. ff. de jur. patron.* Ergò. Hinc concluditur, quod nedum feuda antiqua ex pacto & providentia † bonis poſſeſſoris vaſalli pu- 20
blicatis, eripi jure poſſint atque una confiſcari in præjudicium agnatorum, cum feuda libere beneficio primi acquirentis magis, quam jure ſanguinis & ſucceſſionis devolvantur ad agnatos, *c. 1. an agnat. vel filius defunct. retin. poſſ. feud. repud. hered. Paris. volum. 3. conſil. 6. n. 7. Gail. 2. obſerv. 1. 4. nu. 1. & 2. & de pp. 2. cap. 14. num.* 8. hinc accidit, quod juxta eundem Gail. agnati non teneantur luere æs alienum ab hypotheca, quam reſpectu hujuſmodi bonorum debitor defunctus expoſuit creditoribus, quod quoad filios longè ſe aliter habet hodierno ſtylo Cameræ ab antiquo jam recta deviantis, & aliud, ut Gallii temporis [illegible] vel pronunciantis per ſententias paſſim ita & [illegible], uti in [illegible] quodam reſponſo atteſtantur JCti Helmſtadienſes [illegible] contra L. quod reſponſum nec non conſilia alia irrefragabilia nuper [illegible] M. quem eo uſque pro calumniatore & nugatore habebo, donec ſcriptis ſuis, ſi diis placet refutatoriis contra me immerentem, dira & crudelia ſcommata & calumnias verificaverit.

Sed ad rem: Agnati autem, vaſallo proſcripto, vel bonis ejuſdem pu-

 blicatis,

blicatis, poſtquam in fata is conceſſerit, feudum a Domino repetere, novamq; poſtulare inveſtituram teneatur, *Gail d. pp. d c. 14. num. 8.* Domino fructus feudales quousq; vaſallus proſcriptus vivit, lucrante, qui demum defuncto delinquente mediante inveſtitura tranſeunt ad agnatos, quo ſpectat [illegible] illa brocardica: Quod agnati proximiores ſint conjuncti conjunctione legali,
21 ex qua ſola & non ex verbali jus accreſcendi † in feudis procedit. *ex text. de his, qui feud. dar. poſſ.* atque hæc conjunctio legalis in uſu feudorum dicitur ipſa feudi natura. *Idem Gail. d. loc. n. 13. vide Receſſ. Imp. de An. 1548.* §. Von Pön der Friedbrecher, ꝛc. *ibi.* Die Lehen ſo viel die Vberfahrer dero gebrauchet / den Lehen-Herrn verfallen ſeyn / vnd dieſelben Lehen / oder derſelbigen Theyl ſo lange der Friedbrecher lebet / jhm oder andern Lehens Erben nicht leyhen / ſondern ſeinem Theyl oder Abnutzungen folgen laſſen / ꝛc. §. 2. Vnnd wann nun die Sachen zwiſchen dem Echter vnd den beſchädigten vertragen vnd verglichen iſt / ſo ſoll der Lehen-Herr dem geweſen Echter vnd Friedbrecher / die Lehen-Güter widerumb zuſtellen / dergleichen / wo der Echter in der Acht ſtirbt / vnd ſeines Leibes Lehen fehige Erben / ſich mit den Beſchädigten vergleichen / vnd die Lehen darauff jhnen zuverleyhen begern / dem ſoll der Lehen-Herr ſtatt thun / vnd die Lehen wie an einem jeden Ort gebräuchig iſt / zu leyhen [illegible] ſchuldig ſeyn / doch ſoll in ſolchem Fall den Agnaten an jhren Lehens-Rechten vnd Gerechtigkeiten hierinne nichts benommen ſeyn / wo aber der Friedbruch wider den Lehen-Herrn beſchehen wer / ſo ſoll derhalben / was hierin das Lehen-Recht vermag vnd gebreuchlich iſt / gehalten werden.

Diximus præterea feudum aperiri Domino per modum confiſcationis ſiquidem feloniam ejuſmodi patrarit vaſallus, quæ in caput & injuriam Domini redundaret, quæ concluſio hoc infert, ut quia feudum hanc tacitam in ſe complectatur conditionem: Si vaſalli accepti beneficii immemores non fuerint, &c. *l. cum quid ubi Dd. ff. de reb. credit. vide prolixè Gail. 2. de pp. cap. 13. num.* 11. vel ſi quid contra conventionem inveſtituræ non patraverint, *Boſſ. d. loc. num.* 58. quæ & aliæ conditiones adeò ſunt conglutinatæ & infixæ feudi in genere, ut ſublata fidelitate quoque feudum ſubſiſtere & durare non poſſit, *arg. c. forus. de V. S.* & hoc ideò receptum eſt, ait *Gail d. loc.* quia primæ conceſſioni, vel reverſalibus, ut hodie loquimur, tacita conditio ineſſe cenſetur, quatenus videlicet ſucceſſores feudorum nullam erga perſonam Domini ingratitudinem committant, quæ conditio tacita pro expreſſa habetur, hæc ille. *Boſſ. d. loc.* Subdit verò, *Gail d. loc.* Quod juris hæc diſpoſitio petita, *ex c. 1. §. [illegible] quæ ſit princ. cauſ. benef. amitt.* ut porè odioſa & exorbitans non niſi in atrocioribus delicti caſibus obtineat, ut quoties vaſallus ſcienter & perfidè contra Dominum conſpiraſſet, arma ſumpſiſſet, ac hominibus coadunatis expreſſam moviſſet, &c. Si vitæ ac famæ ejus inſidiatus eſſet. [illegible] hic oportet, quod hæc non aliter ſtringat, niſi oſtenſus ubi & Dominus feudi &

[illegible]

ma[illegible] fuerit, neq; enim non ſubditus † non cõmittit crimen læſæ majeſtatis. *C[illegible]n. pa[illegible]r[illegible]lis, § rurſus de re jud.* Exinde concluditur & infertur: Quod ſi adverſ[illegible] agn[illegible] s tam dura ſtringat conditio, ea utplurimum & longe magis [illegible] [illegible] & obliget filium, cujus in hac parte, omnes ajunt communi [illegible], con[illegible]tionem eſſe deteriorem, quam agnatorum reſpectu delinquentis convaſalli vel parentis, cujus bona publicanda erunt, *d. c. 1. § fin. quæ fuit, [illegible] arg. l. 5 C. ad L. Jul. majeſt.* filius enim utpote portio & pars viſcerum paternorum præſumitur fore haud abſimilis patri, *d. l. 5* 22

Sic [illegible] an[illegible] catulos ſimiles ſic m[illegible] [illegible] hœdos.

Virgil. ca[illegible] [illegible] ol Ecc. 1. Alciat. de præſ. præſ. 24 p. 69 Gai[illegible] d. loc. n. 24. vide omnino part. [illegible] cap 24. Illud tamen non oblivioni tradendum eſt, quod feudum † adhuc penes avum paternum exiſtens, nepos non perdat beneficium delinquente patre, cujus bona publicantur, quia filius delinquentis vel nepos non ſuc[illegible] avo ex perſona patris repræſentationis jure quodam, ſed ex perſona propria tanquam avi heres, qui nihil admiſit, *l. ſi avus C. de lib. prater. [illegible] Gail. d. lo[illegible]* Deinde notatu dignum. Quod Emphiteuſis Eccleſiaſtic[illegible] † non [illegible] in [illegible] niſi[illegible], quam ſententiam communem eſſe atteſtatur, *Gail. d. lib. 2. de pr. cap. 14. num. 16. negat vero Boſſ. d. loc. n. 60. allegans Novell. Juſtini[illegible] [illegible]ap. 2. ibi. & non majoribus fiſci præſtationibus pregravatam, [illegible]* quam novellam prolixè examinat & variis argumentis hanc quæſtionem pro & contra, ut loquimur diſputat, quò lectorem brevitatis ergo remitto. 23 24

A[illegible] dubium non eſt quin fiſcus vendicare † ſibi poſſit bona quoque extra terr[illegible] [illegible] per [illegible] juris, qua in parte impeditus nec creditoribus hære[illegible] ſatisfacere cogeretur, *Boſſ. d. loc.* non tamen quoad bona futura & acqui[illegible] delinquente ullum ſibi vendicare jus poterit. *Bart. in l. 1. in fin. ff. de bon. damn. [illegible] in[illegible] [illegible] ad ea, ff. de cond. & dem[illegible] n[illegible]r.* an & quando bona adventitia profectitia & ca[illegible] perveniant ad fiſcum. Porro quid juris in materia alimentorum te[illegible] idem *Boſſ. d. loc num. 71 & ſeqq.* vulgariter quiq; diſputari ſolet, an bona † alienari prohibita cedant fiſco publicatis bonis omnibus? quod communis Schola negat per *auth. bona damnatorum, C. de bon. proſcript. Gail. d. cap. [illegible] in fine* ratio eſt, quam quoq; re[illegible], *Gail. d. loc* quia bona ejuſmodi ad extraneos heredes non tranſeunt. Ergò nec ad fiſcum, *Boſſ. d. loc.* Animadvertendum vero eſt qua fronte & reſpectu prohibitio ejuſmodi ſit facta, de antiqua prohibitione, quæ modo in conſuetudinem abiit nulla eſt quæſtio, ſi de novo ſiat [illegible] prohibitio & mox ſequatur bonorum publicatio reo delinquente, res [illegible] eſt ſuſpicionis plena. Quapropter fiſci patrono incumbit inquirere in actiones hominum ne quid ſimulationis pravæ & perverſæ committatur, neque enim malitiis hominum indulgendum, ſed quapar induſtria illis eſt obviandum, *l. [illegible] ff. [illegible]* Sanè 25 26

27 fiſcum fallere † res gravis eſt, & confiſcatione vel mulctâ duplici digna. Cum fiſcus reſpublica minor Eccleſia pari gaudere ſoleant privilegio, per [illegible] ma, ſed quo ſuperior & eminentior authoritas fiſci, eo magis fiſci Dominus erat ſubtimendus juxta illud:

An neſcis longas regibus eſſe manus.

Cum è contra minoribus & Eccleſiæ homines maligni tribuere ſoleant, quantum eis velint pro arbitrio, qui propter Cancellarius ille iniquus dicere ſolitus? quærenda eſſe & augenda bona ex iis, qui ſe ut minimum defendere poſſunt:

——— *Si piſces ſepe minutos*
Magnus comeſt, &c.

28 Fiſcus † eſt patrimonium principis & qui defraudat fiſcum non tam peculatus, quam pro re nata læſæ majeſtatis conſtituitur reus. Noli [illegible] Regis tangere, mit Fürſten vnd Herrn iſt böß Kirſchen eſſen. rc. hinc vulgò [illegible]

29 mus: Princeps † Auguſta, fiſcus pari paſſu ambulant, *l. 6. ff. de iur. [illegible]* & privilegia fiſci & principis ſunt eadem, *Ægid. Boſſ. in tit. de privil. fiſci, n. 5. pag. mihi 579.* Cujus privilegia ſunt, [illegible] fiſci propriè ſic dicti, neque enim jura [illegible], qua principis, ſunt confundenda cum privilegiis fiſci.

30 Quod reus † a fiſco lite pulſus, actori fiſcali [illegible] edere ſua inſtrumenta & quæcunq; probationes, quibus ſeſe inſtruat fiſcus, *l. 2. §. divus, ff. de jure fiſci, l. ne quiſquam, ff. de edend. [illegible] herb. in top. in loc. fiſc. ad Eccleſ. num. 2.* qui hanc regulam extendit ad pias cauſas, ut quoq; reus vel [illegible] cauſæ cogatur edere ſua inſtrumenta actori vel patrono piæ cauſæ, *Ant. de [illegible] in*

31 *c. 1. de præſt.* In cauſis † tamen criminalibus non ſunt ſumendæ [illegible] nes è domo rei, ut loquitur *textus l. 1. [illegible] §. 4. ff. de quæſt.* Cæterùm reus ſponte non exhibens vel [illegible] ſua inſtrumenta fiſco in civilibus, in [illegible] & turpi

32 ſeſe inquinat ſuſpicione, *d. l. 1. §. divus, ff. de jur. fiſc.* imo bona [illegible] tenetur indicare fiſco quæ fiſco debentur etiam mediante quæſtione, *[illegible] Bald. in l. 1. C. de hered. vel act. vend.* ad quæ exploranda & [illegible] tus fuit inventum delatorum munus, qui ex delatione [illegible] conſequebantur, *l. 1. C. de his qui ſe defer. lib. 10. l. 13. §. 5. ff. de jur. fiſc.* quadruplatores vulgò dicti, *[illegible] part. [illegible]*

2. Quod [illegible] hereditatem debitoris fiſci reſpectu tributorum vel [illegible] publici vel debiti fiſcalis perdit cætera lucra, quæcunque is à debitore fiſci [illegible] quocunq; titulo acquiſivit, *gloſſ. in l. heredes, C. de [illegible] lib. 11*

34 3. Securitas † data debitori à principe non extenditur ad debitum fiſcale, niſi reſcriptum expreſſe ſeſe quoq; referat ad fiſcale debitum, *c. S. Novell. 17, [illegible] in top. in loc. fiſc. ad Eccleſ. n. 3.*

4. In cauſis fiſcalibus de ſimplici & plano proceditur & quoties [illegible]

Liquida

liquida eſt, ab arreſto aliis modis irregularibus litigium inchoatur, *Bald. in l. 1. C. de hered. vel act. vend. & Boſſ. in tit. de fiſco, n. 18.* uti quoq; diebus feriatis cauſæ fiſcales ventilari poſſunt, *clem. ſæpe. de V. S. & l. 5. C. de fer.*

5. Fiſcus poteſt ſpecies ſuas quocunq; etiam titulo eas fuerit conſequutus, vetuſtate corruptas, & quas ſine inſigni detrimento vel jactura vendere non poteſt, niſi eas commiſceat cum ſpeciebus bonis, eas ſine falſi nota [illegible] & confundere, *l. 1. C. de com. in pub. hor. lib. 10.*

6. Fiſcus † reſtituitur in integrum adverſus probationes omiſſas, a [illegible] appellationes & contractus ex quibus læſus eſt, & ut plurimum et [illegible] entias, *l. 1. C. ſi advers. fiſc. l. unica, C. de ſent. adv. fiſc. lat. Boſſ. in d. tit. de [illegible] ejuſq. privil.* 34

7. Sententia † contra fiſcum lata abſente ejus advocato, eſt ipſo jure nulla, *l. [illegible] C. de [illegible] adv. fiſc.* an ſententia nulla eſt, quæ contra Eccleſiam indefenſam eſt pronunciata, *c. 1. de reb. Eccleſ. non alien. in 6. Eberh. in d. loc. num. 5.* huic affine eſt hoc, quod non niſi coram procuratore Cæſari vel judice fiſci competenti cauſa fiſcalis ſit ventilanda. ſi ſecus fuerit factitatum, ſententia quoq; ſit nulla, *l. ſi minori. ub. Dd. C. de jur. fiſci.* 35

8. Fiſcus † ſuccedens privato, quanquam utatur jure privati, *l. 2. §. cum ex cauſa ff. h. t.* non tamen pro privato reputatur de futuro, ubi jam negociari & contrahere cœperit cum aliis, præterquam qui creditores vel debitores [illegible] defuncti, cui fiſcus ſucceſſit, *l. fiſcus. C. de jur. fiſci. Eberh. in top. d. loc. n. [illegible]* [illegible] privilegiis [illegible] fiſcus quoad ſolemnia acquirendæ vel omittendæ hereditatis. Etenim fiſcus † non tenetur conficere inventarium, *l. 1. §. an bona, ubi Bart. ff. [illegible]* qui regulariter ultra vires hereditatis haud obligatur, *Boſſ. d. loc. num. [illegible]* tamen erit, ut inventarium fiat, quomodo enim hæc exceptio [illegible] fundabitur, ſi de viribus hæreditatis non liquido conſtiterit, qui enim [illegible] plus [illegible] in hæreditate, procul dubio quod adſerit probare tenebitur, *argum. auth. ſi quis. C. de edend.* An fiſco cedat hæreditas ſine [illegible] puta *Bart. in l. 1. & [illegible] ff. de jure fiſci.* Porrò, an dominium quæratur fiſco ipſo jure [illegible] *idem Bart. in l. 34. ff. eod.* 36 37

9. Bona fiſcalia † non ſunt obnoxia oneribus extraordinariis, *l. 1. & 2. C. de privil. dom. Auguſt.* quia bona fiſcalia ſunt fructus Juriſdictionis, *Ægid. Boſſ. d. loc. [illegible] & privileg. fiſci, num. [illegible]* nec non patrimonium & bona principis [illegible]. 38

10. Vendita † a fiſco hereditate, creditores hereditarii conveniunt emtorem non fiſcum [illegible] *Boſſ. d. loc. num. [illegible] 5.* Sic fiſcus non tam arctè de evictione tenetur, quàm venditor privatus, *l. 1. C. ne fiſc. [illegible] quam vend. de evinc. Idem d. loc.* [illegible] contractus cum fiſco celebratus, reſpectu fiſci habet vim legis. 39

11. Fiſcus ſuos peculiares habet judices adeò, ut reus teneatur [illegible] forum

forum fiſci actoris, *l.1. C.ubi cauſ.fiſc.* & *l.2 C.ſi adv.fiſc.* [illegible] idem obtinet inter
privatos, quoties cauſa dependet à fiſco, *l.cum vendente, C. ubi cauſ.* [illegible]
40 *cum eorum ubi Bart. C. de ſent.* & *interl. om. jud.* hinc prævention † juriſdictio-
nis non habet in fiſco etiam ſuccedente privato, nam utcunq; fiſcus ſuccedit
jure privati utitur, non tamen inde tollitur vel derogatur cognitioni cauſæ fi-
ſcalis, quæ ſoli Cæſaris procuratori, vel judici fiſci competit, *l.1. C. ubi cauſ.
fiſci, &c.*

41 12. Debitor † fiſci condemnatus non poteſt appellare ad ſuperiorem.
l.quoniam, C.de appell. uti receptum jure extat de debitore patrimonii privati.
Principis, *l.abſtinendum, l.fin. C.quor. appell. non recip.*

13. Si adminiſtrator fiſci nonnihil ſibi emit pecuniis ad fiſcum ſpectan-
te, fiſcus id vendicare poteſt, *l.ut proponis, C. de R. V.* alias præſumitur pecu-
42 nia publica comparatum, ſi quod prætium † amplum emerit, ſi e nec conſtet
unde & ex qua cauſa lucra, an alia precia rerum deprompſerit, *Bald.* [illegible]
C.de hered. vel act. vend. gl. in l.facult. C.de jur. fiſc. vide part. 2. de indic. peculat.
43 Regulariter ea propter fiſcus † tacitam habet hypothecam in bonis admi-
niſtratorum ſuorum utplurimum futuris, *l.ſi quis, ubi gloſſ. in verbo habuit, C.
de bon. proſcript. Boſſ. d.loc. n 32.*

44 14. Sic fiſcus † tacitam habet hypothecam in bonis debitorum ſuo-
rum, eorumq; in genere, qui fiſco obligantur ex contractu vel quaſi, *l 46. §.3.
ff. de jur. fiſci, l.2. C.in qu. cap. pign. tac. contr. l. unic. Cod. de rei ux. act. l.fin. C.de
pact. conv. l.aſſiduis, C. qui pot. in pign. habe.* [illegible] re mulier & fiſcus parifi-
cantur. *d l.aſſiduis, & ſi fuerat. l. ſ. de act. Eberh.* [illegible] *top. in loc. a fiſco ad dotem* ubi
45 cum Gailio côtra Myntingerum ſtatuit. Quod fiſcus † nec mulier in concur-
ſu præferantur creditoribus anteriorem expreſſam hypothecam habentibus.
Gail. 2. obſerv. 15. num. 1[illegible] *Minſing. 4. obſerv. 13.* Sed quid in hac diverſitate
factitandum ſtatuendum Mynſing. refert ſuo tempore reſponſum fuiſſe pro
muliere, *Gail.* contra refert videndum hinc quantum præjudicii ſit fiden-
dum. Sic conſtat in ardua illa quæſtione, an filius repudiare poſſit hereditа-
tem patris, retento ad hunc effectum ne teneatur creditoribus. *Gail.* diſtin-
guit inter bona feudalia ex pacto & providentia majorum acquiſita & here-
ditaria feuda, *2. obſervat. 154.* hodie longe aliter reſpondent Camerales. Sic in
cauſa monetæ mutatæ olim creditori ſatisfaciendum juxta tempus ſolutionis
reſponderunt, *Gilman. in decīſ. Camer. pag.* 1 nunc ſecundum tempus contra-
ctus ſolutionem faciendam eſſe reſpondent & quæ alia, &c. Sane ſiquidem
ex fonte juris civilis cauſæ deciſio petenda erit. *Gailii* argumenta parū meo
judicio exiguo habent ſucci, (1.) neque enim regulæ proviſio hominis tollit
proviſionem legis, locu habet in privilegiis. *Ægid Boſſ. d loc* (2.) Dicit fore ut
multi inde decipiantur creditores. At qui in æquius & reipublicæ ſalutarius
tius decipi fiſcum, uxorem: quam creditorem unum atque alterum, qui non-
nun-

nunquam [illegible] [illegible], technis congeſſerunt nummorũ ſummam contra [illegible] [illegible]. Ad quid jus [illegible] vel quorſum conſtitutio *Juſtiniani* † *in d. l. aſſiduis.* Si jure communi ſaltem utatur uxor vel fiſcus, quo 46
omni [illegible] tenentur, quoties in hoc paſſu excluduntur, verba autem legum non debent ſervire vento, & ſtare ſine virtute operandi, *l. 19. ubi Dd. ff. ad exhibendum*

Neq; obſtat quod in concurſu tacitarum hypothecariorum præferatur demum fiſcus vel mulier, eoque reſtringendus ſit, *textus d. l. aſſiduis.* Reſpondeo divinatoriam eſſe inſtantiam & explicationem cui refragatur totus textus, qui eſt planiſſimus & omnis diverticuli vel diſtinctionis expers, perdurum vero eſt [illegible] admittere diſtinctionem, ubi lex ſilet, *l. 1 §. generaliter, ff. de [illegible]* [illegible] ait *Gail.* privilegia † citra injuriam alterius eſſe conce- 47
denda, & *l. 2 §. ſi quis ff. ne quid in loc. publ. vel ut Dd. in tom. var. conſil. reſpondent tom. 2 conſil.* 1. Privilegium non poteſt dari in præjudicium tertii, qui citari debet & audiri priuſquam promulgatur privilegium, hinc vulgò in eandem ſententiam dicimus: Quod privilegia ita ſint explicanda ne lædant jus tertii, *l. quoties, C. de precib. imp. offer.* [illegible]. Non auferri jus tertio hiſce aliiſq; prærogativis, ſed poſtponi in quantum in concurſu jus creditorum, quæ remiſſio privationem non inducit. Quin [illegible] ſequeretur ex ſententia *Gailii* abſurdum hoc: Quod nedum cauſæ primipilares expenſæ funebres mercedes famulorum vel miniſtrarum, &c. præponerentur vel præponi deberent creditis antiquioribus, uſque hypothecâ expreſſa munitis. Quod tamen abſurdum eſt & a jure & ratione recta alienum, ita verò capienda eſt omnis legum vel ſtatutorum explicatio, ne inde ſequatur abſurditas, *l. 2. ubi Dd. C. de noxal. act. & l. 11. §. 1. ff. de muner. Eberhard. in top. in loc. ab abſurdo, num. 4. & ſeqq.* Porrò quorſum exularet favor publicus, quoad cauſam primipili & Fiſci, ſiquidem privatorum commoda & actiones anteferendas eſſe dixerim bono publico, quod cauſam [illegible] hic in ſeſe complectitur & cur jura privatorum cedant, omnibus dictitat, *Clamm. in prompt. tit. 33. §. 7. n. 4.*

15 Reſpectu fiſci † mora committitur ſine ulla interpellatione, *gl.* 48
in l. cum quidam, §. fiſcus in verbo inferunt, ff. de uſur. [illegible] *in l. 1. ff. de his quib. ut indig.* quod ſimiliter quoad minores eſt receptum, *l. in minorum, C. in quib. cauſ. in integr. reſt. non eſt neceſſ. & l. Titio §. uſuras ff. de delegat. 2.*

16 Acquiſita [illegible] præſumuntur acquiſita intuitu vel e[illegible] modo diximus *gl.* [illegible] *in l. defenſionis in fine, C. de jure fiſc.* [illegible] dicit, *Bart. in l. 1. C. de aur. publ. per ſec. lib. 10.* exiſtimat [illegible] *num.* [illegible] aliter lucrum ad fiſcum per- 49
tinere, niſi adminiſtrator tenebatur ſtatim conferre in ærarium pecuniam fiſcalem, quam ad tempus retinuit, inde [illegible] non nihil eſt lucratus, ſecus ſi in nummi eò deſtinantur, ut parati ſint continuo, ſcilicet ne repentinis erogationibus,

bus, fiſcus evacuetur, ſed pro neceſſitate publica certa & perpetua ſit nummorum ſumma in promptu: quam ſententiam veriorem & juxta eam declarandam puto, *l.1. C. arbitr. tutelæ. Alias Bald. in l.1. C. de hered. vel act. vendit. refert*: Quod pecunia tempore quo adminiſtrabitur fiſcus, comparata a quæſtore vel adminiſtratore fiſci, præſumantur pecunia fiſci emta, quam doctrinam. *Boſſ.* pro tyrannis facere ait, qui raro vel nunquam permittunt recedere officiales cum quodam lucro, hinc illud: Regium eſt † dimidium totius, Tyranni totum auferre, *Wilh. arem. ab Erenb. in tract. de Regn. ſubſid. & oner. ſubdit. pag.* [illegible].

Dimidium quam ſit toto præſtantius illud
Haud novit ſtultus, &c.

51 *Idem ex Suida, d. loc.* Virum bonum † bene tractari oportet, nec de eo ſiniſtri quicquam præſumendum eſt, niſi una atq; altera præſumptio eaq; fortis & vehemens integritatis fulcra ſubvertat, *Tiraquell. de pœn. cauſ. 51. n.* [illegible] *& ſeqq.* neq; enim vitæ hominum eſt mutatio facilis, quæ cum animi ſubita labore contingit:

Nemo repente fuit turpiſſimus, accipient te
Paulatim, qui longa domi redimicula ſumunt.

Quem verſiculum ex *Juven. Satyr. 2.* allegat gloſſa pro hac ſententia, *in d. ſt. 2. de pœn. §. è contrario, &c.* Quæ integritatis præſumptio non tam ex munere publicè geſto, quam quoque vita privata decenter ante acta debet depromi, & ad actus vitæ ſubſequentis declarationé omnino adhiberi. Quoniam ò ut fiſci benè adminiſtrati vel adminiſtrãdo cura & induſtria reipublicæ, magna adferat commoda, cum fiſcus ſit nervus reipublicæ, patrimonium principis, aſylum bonorum & terror malorum hominum. Ita ad adminiſtrandum fi-
52 ſcum † non niſi variante probè perſpecti de moribus merito eligi debent: de quo cre-
53 teri ſi, quã de re conſulat lector Politicos. *Fatetur Ægidius Boſſius*, qui fuit † Patricius Mediolanenſis & ex familia Joannis & Martini primorum gloſſa-
54 torum, ut de ſe ſcribit *in pract. crim. pag. 95.* Quod una cum D. Simone Boſſio † Collega ſuo functus ſit munere advocationis Fiſcalis in toto Mediolanenſi Dominio, ut verba ejus formalia ſonant, *in d. pract. crim. in tit. de Carcerat. fidejuſſ. nu. 98. pag. mihi* [illegible]. Sic Gandinus Excellentiſſ. JCtus idem ſtrenuiſſ. tavit officium, *Aug. de in Ariminenſ. ut fatetur in addit. gloſſ. ad Angel. Aretin.* Gandinus quoq; toto vitæ ſuæ tempore, ut ſcribit *Boſſ. d. loc. tit. de delict. n. 17.* diverſis in locis litibus criminalibus fuit occupatus, qui in ſe maleficiorum Princeps dicitur, *a Boſſ. d. loc. Hippol. de Marſil. circa idem* eſt verſatus dominus a tempore juſtæ ætatis uſq; in ſenectutem, qui ſe capitaneum & judicem maleficiorum appellat, *in l. 1. n. 27 ff. de qq.* [illegible], hic adverſatur. Quod ſcribit *Ariſm. Tepat. de jure* [illegible], Quod fiſcalis ſit vir parum placidus, omnibus inviſus, parum aut nihil æquitatis in ſe habens, [illegible]

ſes

ſas eſt, [illegible] qui ceorum ſanguine rubet, *vide Conr. Harpr. in tr. crim concl. 4. n. 20.* ubi [illegible]uthor Synon. quem non obſcurè ſuſpicor eſſe Dn. Wilhelmum Antonii amicum meum ſingularem. Reſp. Diſtinguendum eſſe inter relatorem vel delatorem criminum, ſive procuratorē cauſarum criminalium quos vulgo Fiſcales dicimus, & ipſum fiſci patronum & advocatum, quale munus apud Hollandiæ ſtatus vir Nobiliſſimus Hugo Grotius ſuſtinuit. Ad munus illud admittuntur homines quivis, qui cum antiquitus ex delatione maleficiorum participarent, quadruplatores dicebantur, hiſce ut utantur magiſtratus hodierni non erit prorſus inconſultum, nempe ne crimina maneant impunita. Ad hoc vocati & conducti ſunt viri, ut maximè eminentiores, *l. 1. & 2. ubi Dd. C de Advo[illegible] fiſci.* hodie in regnis & ducatibus amplioribus officium hoc advocationi[illegible] fiſci nobile eſt in Camera, quale iſtud officium & cujus authoritatis ſit, nemini niſi idiotæ eſt obſcurum? M. Graſſus JCtus eximius, qui ſolennem illum [illegible] communionum opinionum conſcripſit tractatum fiſci Advocatus fuit in Pomerania, qui jam pridem ad hoc munus conſtitutus, obviam venit nobili cuidam Pomerano juxta aquam profluentem, quid audio, inquit, ſcurra nobilis, qui procul dubio ante hac ſimultates habuit cum viro illo egregio, vel quia faſtidio illi fuit officium illud, quo contumaces & refractarii ſæpenumero co[illegible]centur, tune es fiſcalis, reſpondente illo, quod ſic: Ergo, inquit nobilis, vade [illegible] undam & piſcare anguillas: quo dicto de ponte projecit hominem in a[illegible]m non ſine periculo. At nequam ille in mulctam 4000. inde eſt mulctatus, teſtis hujus facti eſt, *Eberh. à Wethe amicus noſter in diſcurſ. famil.*

CAPUT XIII.

DE INTERROGATIONE REORUM.

SUMMARIA.

1. *Quomodo rei ſint interrogandi?*
2. *Accuſator non debet [illegible] [illegible] probationes [illegible] ex domo rei.*
3. *[illegible] interrogationum quænam ſit.*
4. *Iudex [illegible] debet [illegible] ut in [illegible] reos.*
5. *An judex promittens gratiam reis [illegible] de expiſcari jure poſſit [illegible]?*
6. *An judex minis capitalibus [illegible] verbis durioribus poſſit reos urgere, ut [illegible]teantur?*
7. *Reus priuſquam interrogetur jurare debet, quod velit dicere veritatem.*
8. *Interrogatio non tam ſolennis ſit ut inde litis [illegible] ceſtatio vel receptio nominis in reos [illegible] quæ[illegible].*
9. *[illegible] licatur §. 2 [illegible] l. 1. ff. de qq.*
10. *Modus ſervandus eſt ſub interrogationibus.*
11. *An [illegible] per interrogationes hujuſmodi [illegible] habeat vim judicialis confeſſionis?*
12. *[illegible] eſt ratificatio confeſſionis ita facta.*
13. *An & quomodo rei poſſint revocare hanc confeſſionem?*

14. Iuramenta re[illegible] in hac in- stantia [illegible]

15. Confessio re[illegible] dicto omnin[illegible]

POrrò cum rei comparuerunt in termino, sive sponte (1.) cum ad examinē judicis se sistunt, sive coactè (2.) quando capti adducuntur in judicium, vel (3.) quoties per procuratorem in [illegible]alibus, ubi procurator admittitur, causam agere satagunt, judex ea quæ sub inquisitione generali rec[illegible] habet, 1 ei[illegible] proponere & interrogare tenetur de omnibus capitulis, punctis & circumstantiis, quæ inquisitio generalis præ se fert, *Bart. in l. 2 [illegible] de pub. jud. Boss. de examinib. reorum. nu.* 1 neq; hic adversatur, quod probationes non sint 2 de domo reorum petendæ, non debet initium † probationum de domo rei accusator sumere, *ait textus l. 10. §. 4. ff. de qq.* & nimis grave est [illegible] Cæsares, *in l. 7. C. de testib.* quod petitis, urgeri partem diversam ad ex[illegible] eorum, per quos sibi negotium fiat, unde intelligitis, quod intentionis ve[str]æ proprias adferre debetis probationes, non adversus se ab adversariis adduci. Deinde non movet, quod neminem crimen adeoq; turpitudinem propriam allegare teneri, scilicet quod probrosum & criminosum foret re[illegible] *C. de transact. l. 1[illegible]. § 3. ff. de jurejur.* Respondeo in causa civili [illegible] argumenta sat superq; stringere, nequaquam vero in materia inquisitionis [illegible] rum, *l. [illegible] §. [illegible] ff. de qq.* nam ut rei examinentur inquisitionis [illegible], *Bart. in d. l. 10. ubi ait*: judicem debere pro investiganda veritate de singulis circumstantiis, remotis & propinquis accidentibus nec non de impertinentibus interrogare reos, eorumq; responsiones [illegible] annotare, *l. 18. C. de testib. Novel. 90. [illegible] Cujac. in exp[illegible].* Sanè si quapiam in re ju3 dicis discretio desideratur [illegible] illa summè est † necessaria, [illegible] quid enim quæstiones rigorosæ, fidiculæ & instrumenta tormentorum [illegible] eruendam veritatem? *l. 1. ff. de qq.* quæ si brevi vel facili compendio haberi potest, nonne omnibus nervis contendere præstat? quo spectat dictum *Bald. [illegible]*
4 *C. de testib.* Quod judex debeat conari † in verbis capere reos. Suaves namque ad ridendum materia [illegible], ut utar [illegible] *Donell. [illegible] m. 1.* qui contendunt & mor5 dicus quasi defendunt non licere judici † sub spe [illegible] gratiæ & relaxationis [illegible] ut sponte confiteantur, vel si quidem ultro confessi fuerint, confessi[illegible] possit, vel judex fidem datam servare teneatur, *vide part. [illegible] de examin. [illegible] num. 17. & seqq.* neq; ad rem spectat dum [illegible] inter persuasionem sic comparatam, quæ prorsus doli est expers [illegible] machinationem, ut quando judex dicat: necessarium reo esse [illegible] dimissionem & salutem. ut confiteatur delictum nullis [illegible] bus [illegible] *Bart. d. loc. num. 17.* quicunq; [illegible] rem, [illegible] dit, & nulla fraus nulla injuria [illegible], qui quibuscunque inductus verbis confitetur & exonerat suam conscientiam, [illegible] Quod nihilominus confessio rei conficiatur [illegible] perit[illegible], [illegible],

quoni-

nonnullis operatetur. Sed abſurdum hoc, *vide part. 1. c. 19.* Demiror eos ipſos authores, qui inſtigationem hujuſmodi impugnant, inſtruere judices eosq; ſerio admonere, ut quo poſſint ſtudio & ſolertia expiſcari reos, reaſve, fingendo, quod eas deperiant & falſa eis demonſtrando amoris ſigna & quæ alia. *Boſſ. d. loc. num. 17.* Utrum verò minis † & verbis atrocioribus, uti queat judex ad extorquendam confeſſionem? Quod ſimiliter negant nonnulli, *in l. 1. §. 21. ff. de qq.* Sed res ſimiliter eſt plena & expedita: Cum enim rei utplurimum adhibita tam immani & atroci tortura examinantur, iisq; ſubinde exprimitur confeſſio, quidni verbis diris & minis capitalibus eos terrere licebit, ut confiteantur: neq; enim debet, cui plus licet, quod minus eſt non licere, *Ulpian. in l. 21. ff. de R. J.* quinimò ipſa juris neceſſitas requirit rigorem in judice, quandoquidem rei tam frontis perfrictæ ac cervicis duræ eſſe ſolent, ut bona verba quaſi bullam aquoſam æſtiment, imò potius irrideant clementiam judicis, cum tamen hoc examen ab inquiſitione generali depromptum, ſuum uſum & ἐνέργειαν inſignem præ ſe ferat, ſæpenumero enim ex verbis, inconſtantia ſermonis, trepidatione, vultu, ea profluunt indicia, quæ ſi antecedentibus ſub inquiſitione, ut dixi generali, repertis indiciis junxeris, plenum procul dubio conficient penu, quo judex ad quæſtionem tranſcendere jure poſſit? *vide part. 1. cap. 13.* 6

Animadvertendum hic eſt, ne judex improvidus & imperitus hic confundat generale cum ſpeciali inquiſitione opus, etenim dum hæc examina urget, retroſpicere debet ad generalem inquiſitionem, neq; exinde ſeſe præcipitare in proceſſum inquiſitionis ſpecialis, cujus initium fiat prælucente doctrina & admonitione, *Aretin. in §. comparuerunt, dictis inquiſiti in princ.* cujus emphatica verba hæc ſunt. Tu judex non recipias aliquam reſponſionem in maleficiis, niſi juret † reus de reſpondendo veritatem, &c. neq; enim 7 in tantum † exuberare debet modum hoc examen, ut inde conteſtatio litis 8 & receptio in reos fundari & formari jure poſſit, *Aretin. d. loc.* Porrò ex ſupradictis quoque ipſorum ſententia corruit, qui ſtatuunt nedum in ſpecie interrogandos eſſe reos, ne ſuggerentis officium vel potius vitium in ſeſe derivet judex *contr. à l. 1. § 21. ff. de qq.* quamquam verò *Ulpian.* † *in d. l. 1.* ſuggeſtio 9 non judicis interdicat, non tamen inde utpote à tortura ad examen nullum eſt inferendum, tantum diverſitatis in eo conſiſtit, quod quæſtio rigoroſa vel tortura irreparabile commeat præjudicium, graviusque ſit utriuſq; manus amputatione, § [illegible] *jud.* ubi [illegible] urum & illaqueatum reſpondendi erit arbitrium, alias enim foret quæſtio nulla, quæ exceptione elidi poſſit, uti infra plenius conſtabit, *d. l. 1. § 21.* examen illud vel tentamen potius modici eſt præjudicii, niſi ſe ipſum [illegible] prodat reus, vel convictus quovis pacto ea fateatur, quæ vel tormentis ipſi exprimi non poterant, pleriquè enim ait *Ulpian. d. l. 1. §. 23. ff. de qq.* potentia ſive duritia tormentorum

rum

rum ita tormenta contemnunt, ut exprimi veritas eis nullo modo poſſit. Hinc ſine civili & teſtamentaria cauſa licet teſtator rogari non debeat quem heredem eſſe velit, *l. heredes, C. de teſtam.* Si tamen ad interrogationem ſpecialem Notarii, reſponderit affirmativè, inſtitutionem heredis ſubſiſtere, eamque communem eſſe opinionem refert, *Ægid. Boſſ. d. loc. num.* 13. quod vero dicitur *d. l.* 1. *§.* 23. taxetur reorum quorundam tanta impatientia, ut potius mentiri, quam tormenta pati velint, non ad rem pertinet præſentem, neque ea impatientia eo aſtringet reum, ut extra torturam fateatur ea, quæ a [illegible] quæ-
10 ſtione confiteri prorſus nollet, monet † autem *Boſſius d. l. loc.* inquiſitores, ne pendente hoc examine, pluſquam oportet rei deterreantur, allegans exemplum tragicum, qui Johannes Capiſtranus Patronus fiſci Neapolitani minatus fuerit filio cuidam, unà cum patre, de crimine, delicto, quaſi decollato patre confeſtim filium quoq; ſit occiſurus, cum tamen filius eſſet innocens, quod quoq; non latuit judicem, filius conſpiciens decollatum patrem, nec aliud exiſtimans, quam de ſeſe modo ſupplicium ſumptum iri, [illegible] tremor & deliquium animi ipſum invaſit, ut illico expiraret animam. Judex hoc fatali caſu viciſſim territus depoſuit faſces & reſignavit mundo, ordinem S. Franciſci aſſumens, hæc teſtatur *Boſſ. d. loc.*

11 Quæſtio ſuccedit, utrum confeſſio † per examen ejuſmodi acquiſita, vim judicialis confeſſionis obtineat adeò, ut exinde condemnari [illegible] queat reus? ita dicendum *eſt ex l.* 16. *C. de pœn.* ibi, vel interrogationibus fuerint deditu, *Maril. in ſing. ſing.* 329. cui ſententiæ non pauci reclamant, aſſeren-
12 tes † neceſſariam eſſe ratificationem vel perſeverantiam, quoniam alias reis confitentibus regulariter concedantur defenſiones, *l.* 1. *§.* [illegible] *ff. de qq.* Si quis ultrò de maleficio côfiteatur ait textus non ſemper fides ei habenda eſt, nonnunquam enim metu aut quâ aliâ de causâ in ſe confitetur. Quapropter, ut dixi, multi ex noſtris ſtatuunt defenſionem eſſe dandam confitentibus, qui forû non crediderunt, ineſcati blandiciis judicum, fore ut ex confeſſione ſta-
13 tim condemnarentur. Defenſio autem non aliter eis dabitur † quàm ſi revocaverint confeſſionem in continenti & dilationem petierint ad deducendam ſuam innocentiam, vel ſiquidem ſub examine confeſſi fuerint cædem, ex intervallo autem pœniteant & dicant cedem factam ad ſui defenſionem, vel ſi errorem allegent confeſſionis, *gloſ. in c. Roman.* [illegible] *de appell. in* 6. *&* [illegible] *Aretin. in c.* [illegible] *de accuſat.* hactenus autem confeſſioni ut anchoræ [illegible], donec reus probarit vel defenſionem, errorem vel quæ alia, &c. Aliàs confeſſio continere debet & locum & tempus delicti commiſſi, [illegible] 118. Deinde acceptari debet perinde ac in civilibus cauſis, *Boſſ. d. loc.* [illegible] juſta confeſſio tamen non revocatur, [illegible] *de non* [illegible] *pœn.* [illegible] *de defenſ. reor.* [illegible] id eſt illa confeſſio quæ formata jam inquiſitione ſpeciali eſt facta, in qua omnibus demum [illegible]

ſervata

ſervata proceditur, in hac inſtantia † juramenta recipiuntur eti[illegible] reſpon- 14
den[illegible]iorum & quæ ali[illegible], *Areti[illegible] in § qui dominus judex, &c.* In genere autem
confeſſio revocata † indicium parit, etiamſi coram incompetenti quo[illegible] 15
facta *[illegible] de confeſ[illegible]. num* 54. Deniq; confeſſio ſub tormentis facta & revoca-
ta ſuſpendit executionem, quia quævis confeſſio ratificari debet, *l. 2. ubi D.d. ff. de cuſtod. & exhib. reor. Boſſ. dict. loc. vide omnino Conſtit. Crim. Carol. V. art.* 52. & 53.

CAPUT XIV.

DE CONTUMACIA IN CAUSIS indiciorum.

SUMMARIA.

1. *In cauſa criminali contumacia valde eſt periculoſa.*
2. *Contumax habetur pro confeſſo.*
3. *[illegible] tam [illegible] ſcriptus impune occidi poteſt.*
4. *[illegible] coercendi contumaces in re criminali [illegible], qui [illegible] ferendi banni non habent.*
5. *[illegible] reus pe[illegible] banni, [illegible] ſalvum conductum adhuc comparere & purgare poſſit [illegible] ſuam [illegible] entiam?*
6. *Sententia ob meram contumaciam prolata, nunquam tranſeunt in rem judicatam.*
7. *[illegible] & ſententia [illegible] pa[illegible] am bulant.*
8. *[illegible] reus poſt cauſæ concluſionem quaſi ac vere [illegible] proponit, eadem ſ[illegible] examinari debent.*
9. *Ne educant[illegible] rei à ſuis procuratoribus ad [illegible] andam [illegible] ſtionem.*
10. *Iudex an adhibita quæſtione urgere reum poſſit, ut reſpondeat ad articulos.*
11. *Re[illegible]tatur in hac quæſtione ſententia Marantæ.*
12. *An taciturnitas doloſa pariat indicia?*
13. *Taciturnitas contumaciæ ſpecies eſt.*
14. *An judice nulliter procedente, reus reſpondere teneatur.*
15. *Citatio illegitima reum non conſtituit in mora vel contumacia.*
16. *Cur Salvator coram iniquo judicio tacere voluerit?*
17. *Diogenes Laertius criminaliter accuſatus, reſpondere noluit.*
18. *Declaratur exemplis aliis, hac quæ de taciturnitate adſerebantur, præjudicia.*

DE indiciis quæ ex contumacia naſcuntur, diximus *cap. 33. part. 1. de indic. [illegible].* Jam de contumacia ipſa dicemus, non quidem in genere, ſed quatenus [illegible] hæc materia indiciorum requirit, longe aliter enim conſideratur contumacia in foro civili, [illegible] aliter in criminali commiſſa cauſâ, inconvenientia quæ ſibi [illegible] contumacia [illegible] bunt, *Gail 1. obſerv. 59. 60. Spec[illegible] de contum. Marant. de contum. & practici rerum civilium paſſim.*
In cauſa † criminali contumacia eſt [illegible] periculoſa & præjudicialis 1
reo. Etenim citatus propter maleficium [illegible] ſit inquiſitio, nec ſeſe [illegible],
ſolet condemnari in pœnas contumaciæ, quæ ſunt graves & duræ, habetur † 2

contumaciam de[illegible]um probatur per teſtes. Quod vero dicitur reorum defenſiones adeo neceſſarias eſſe, adeoq; favorabiles, ut in quavis litis criminalis parte eiſdem reus uti poſſit, etiam publicatâ ſententia, *Marſil. Bart. & Dd. in l. 18. §. 9. ff. [illegible] 99.*

Id hanc a[illegible] reſtrictionem, ne in illo proceſſu in quo reus litem eſt conteſtatus, confeſſus vel ſine omni calumnia convictus, & à principio uſq; ad finem litis præſens fuit, reſcindatur ſententia, acta integra temere revocentur, cancellentur, præterquam ſi in momento demonſtrari poſſit ejuſmodi innocentiæ veriſimilitudo, ut judex nonnihil ſuperſedere jure exiſtimabit. Si enim in cauſa civili propter probationes de novo repertas, ſæpenumero reſcinditur concluſio in cauſa, quæ regulariter [illegible] ſententiæ comparatur, 7
c. paſtoralis, ext. de except. Bart. in l. 6. ff. de opt. leg. tt. Gail. [illegible] obſerv 107. nu. [illegible] ait: Quod in cauſa criminali quoad reum nunquam concludatur. Porrò ſi non niſi cauſa cognita [illegible] inſtituitur ſuperveniens querela, ne judicia notoriè vexentur, [illegible] quibus [illegible] præ[illegible]ntia viget, *ut ait text. l. [illegible]. Cod. de judi[illegible].* eadem ratione in criminali judicio non aliter, quam ſummariè de novo allatæ allegationes exam[illegible] diſcuſſæ fuerint. dh[illegible] [illegible] inde collegiorum juridicorum ſuffragiis. Neq; enim præſumendum eſt reum, cujus anima procul dubio deludat[illegible], ut ei[illegible] causa pendente quærat quibus dilabatur, et reliquia[illegible] tentata quæ ad redemptionem ſanguinis ſuſpectabant, ut idcircò ſi qua † deinceps, dimiſſo abſolutoque judicio, proponant, non videantur di- 8
ci Evangelium S. Joannis [illegible] ani-feſtand[illegible] *Pœnalis conſtitut[illegible]nnalis Caroli V. artic. [illegible]* Si captivus (ait) textus conf[illegible]ſſarum delictum [illegible] fuerit, ſuſpicio tamen [illegible] oculis eſt reatus, reducetur in carcerem, ac torqueatur ſic tamen, ut circumſtantiarum exquiſita habeatur [illegible], quo[illegible] torturæ fundamentum deſuper ſubſternatur. Niſi [illegible] tamen ejuſmodi cauſas & rationes ſuæ innocentiæ allegaret unde judex moveretur ad credendum confeſſionem illam [illegible] ex ore factam: tunc quidem poterit [illegible] eundem captivum ad proſequendum & probandum errorem quem [illegible] allegat, admittere *adde art. [illegible]* ubi conſilium datur judicibus, quo pacto procedi [illegible] caſu ſic contingente, *vide Hipp. de Marſil. in §. quoniam, [illegible]* ubi meminit tertia vice confeſſi, & toties negantis [illegible].

Alias [illegible] expreſsè inhiberi ſolet rabulis & indoctis procuratoribus, † ne ſeducant reos, ac eos inſtigent ut confeſſio- 9
nem decenter factam revocent, qua aſtutia [illegible] numero plures moleſtiæ creantur judicibus, & rei ſpe vana lactati in immenſum [illegible] cuntur diſcrimen.

Sed ad coërcendam contumaciam revertimur. non pauci hoc tradunt, poſſe videlicet magiſtratum contumacem † [illegible] in reſpondendo ſubjicere 10

qua-

quæſtioni rigoroſæ ad eruendam veritatem, & ad reſponſionem affirmativam vel negativam, ut ait *Marant. in Spec. aureo part. 6. de contumac. n.* [illegible] *pag. mihi* 2[illegible]7. non tamen ſubdit torqueatur præciſè ut confiteatur, ſed ſolum ut reſpondeat. Et iſte eſt caſus, in quo irrogatur tortura ſine indiciis, quia datur ad aliam finem allegans, *Baldum hanc doctrinam ita ſingulariter tenentem in L. accuſationem, C. qui accuſ. non poſſ. & Paridem de Puteo in tract. Syndic. in*
11 *verſ. tortur. in c. ſequitur quæſtio.* Verum an ſuſtineri † poſſit hæc quæſtio, me latet, (1.) jura communia nec non *Conſtit. Criminalis Caroli V. art.* [illegible] *& aliquot art. ſequentib.* dictitant, non niſi alia ex causa, quam indiciorum probatorum decenti copia, torquendos eſſe reos. (2.) Sine indiciis nedum terreri poſſunt rei, vocato carnifice & inſtrumentis productis, quaſi jam torquendus eſſet reus, *vide Boſſ. in tit. de tort.* (3.) tortura dicitur corporis immenſus dolor, *Bald. in l. 2. C. quor. appell. non recip.* & utriuſq; manus abſciſſione gravior, *c. fin. Novell.* ut nulli judices, &c. a quâ ſævicia proceſſus inclinari crudele & periculum eſt. Operæ precium itaque eſt, ut judex qui fama præcedente procul dubio formavit inquiſitionem generalem & exinde vel citavit vel cepit diffamatum, reo inquiſitionis partes manifeſtet juxta doctrinam *Conſtit. Crim. art.* 45. qui ſive affirmet, ſive neget, ſive taceat, ulterius inquirat donec ſpecialia quædam reperiat indicia. quoties enim ſine captione inveſtigari poteſt, eligendum eſt, quod minimum habet iniquitatis, *Juſtin. Gobler ad Conſt.*
12 *Crim. d. art.* 45. non neſcio taciturnitatem † doloſam per ſeſe indicium parere, ſed ſola efficax non erit ad generandam quæſtionem. Cæterum ſi judex alia adhuc exploravit argumenta, jam demum res eſt plana per tritam ac vulgarem regulam: Quod duo vel plura indicia ſufficienter probata producant tandem quæſtionem. Neque pro *Marante* ſententia militat, quod propter contumaciam, quaſi probationem fictam factamve confeſſionem [illegible] tam, judex procedere poſſit ad ipſam ſententiam condemnatoriam, *vide And. Gail d. ſupra loc. de pac. publ.* Quidni ad quæſtionem, quæ [illegible]? Cui enim quod eſt plus licet, et idem quod minus eſt, quo [illegible] *R.*
13 *J.* [illegible] † autem æque contumaciæ ſpecies eſt [illegible] rei. Ac [illegible] idem eſt [illegible], *Eberhard. in* [illegible] *part.* [illegible] Generare quidem contumaciam confeſſionem fictam & [illegible] ipſam ſententiam, ſed non niſi informem & inefficacem, etenim ut ſupra demonſtratum eſt, ſententia ejuſmodi nunquam tranſit in rem judicatam, quin reus comparere, [illegible] purgare & innocentiam ſuam demonſtrare poſſit, *Gail. lib. 1. de pac. pub. cap. 8. num. 2.* ut ſic (2.) hæc ſententia major dici nequeat ipſa quæſtione, quæ profecto gravior eſt, (3.) quia continet irreparabile damnum & jacturam cauſæ & corporis, *Boſſ.* [illegible] nec non, [illegible] novellæ [illegible] amputationem quaſi utriuſque manus infert. [illegible] Porrò [illegible] contumaciæ exceſſus dici poteſt, ut enim gradus ſunt pœnarum, ſic del[illegible]

rum ſunt menſuræ, hinc vulgò dicimus : Quod pœnæ cum delictis commẽ-
ſurandæ ſint, *c. felicis, §. præmiſſis. de pœn. in 6. auth. ut omnes peregrini, C. com. de ſucceſſ. l. 1. § ſed & qui ff. de abig. l. 22. C. de pœn.* At quis non videt non palpar. gravius offendi judicem per abſentiam rei citati, quam præſentiam rei tacentis, cum plures rei non rarò ita confundantur, terreantur, ut quaſi attoniti obſtupeſcant, quoties in conſpectum judicis adducuntur, *uti Paris. de Puteo exemplum memorabile de quodam nobile refert in tract. Synd. in verb. tortura*, quod licet innocens fuerit, adductus tamen ad tribunal vel locum ubi iterum chorda, ... commiſerit & ſtercora emiſerit, *Boſſ. dict. loc. n. 2.*, ſtatuit ... judicis inter territionem dum ait: Quod omni caſu judex dum examinat ... oſtendere debeat terribilem reis. Sed quid ſi judex hoc in officio ... , ſingulos † actus judiciales à territione incho- 14
ando, an reſpondere confeſtim teneatur reus, quæſtionis eſt, ſanè ubi proceſſus nullus inſtituitur, vel nulliter peragitur nulla inde litigatores, ut ... faciant judici, oritur neceſſitas, cum nedum citatio illegitima quem conſtituat in mora † vel contumacia, *c. fin. ubi DD. ext. de for. gloſſ. in c. de cauſ. in ver-* 15
bo venire ext. de offic. deleg. Sed judex ſine indiciis præcedentibus nec in obſeſſu judicii debet incipere proceſſum à territione *Boſſ. d. lo.* Ergo. Si inordinatè procedit, nec ordinatè, & paſſim ipſum ſequatur reus, nihil eſt, quod imputet tacenti reo, *argum. l. 25. ff. de R. J.* taceo non paucos reos, qui non obſtinata malitia vel diffidentia aut meticuloſitate tacent & non reſpondent, ſed potius fortitudine & cauſæ confidentia, nam

Conſcia mens recti famæ mendacia ridet.

Hinc ipſe Salvator † toties quoties ab iniquo judice Pontio Pilato interro- 16
gatus eo uſque tacebat, donec videbatur reſpondendi tempus adeſſe juſtum & opportunum. Angerona Dea præſes ſilentii obſignato ore antiquitus efficta fuit, ut ſilentio apto nil melius eſſe oſtenderent, *c. Alex. 4 gen. dier. cap. 16*
Diogenes Laërtius † criminaliter accuſatus reſpondere noluit, neque ulla 17
ratione ab Hadriano ad reſpondendum compelli potuit, cujus conſtantiam Cæſar admiratus eidem pepercit, & ſtilum data ei tabula, ut ad aliquot problemata propoſita reſponderet manu ſ... , quod non gravatim fecit ex A... refert *Zwinger. in theat. hum. vitæ lib. 5. pag. mihi 22.* Porrò ... delibus Arioviſti fecit, cur Sequanis ne verbum exprimere poſſet Julius Cæſar, ratio ſubjicitur, quia nedum in occulto de ſævicia Regis Sequanum Arioviſti conqueri, multo minus auxilium contra eum auderent implorare, ſibi imaginantes penitus Arioviſtum ubicunque latere, tantus eos inceſſerat horror tyranni, *Vict. in lib. 1. lect. var. cap. 5.* Sane † eodem modo terreri poſſunt 18
cumprimis inſontes adeoque percelli, ut vel taceant, vel neſciant, quid loquantur.

Ubi vero res eſt clara & dilucida, ubi indicia ſtringunt una cum ſilen-

tio ſuſpecto adverſus reum, procul dubio, ut ſupra diximus, aliter judicandum eſt. Quapropter cum Patii & Salviati contra Medices Florentiæ conjuraſſent & Julianum Laurentii fratrem interfeciſſent, Medices [illegible] oppreſſi & capti ſunt, inter eos Franciſcus Patius conjuratorum [illegible] cum a multitudine irata, nullo non convicii genere afficeretur, [illegible] aut vi cogi potuit, ut verbum efferret, ſed obſtinato ſilentio & [illegible] in eos oculis, a quibus trahebatur, crebra ab imo ſuſpiria pectore [illegible], aliorum iram molem animo premens capitali ſupplicio affectus eſt. *[illegible] lib. 6. hiſt. Florentin.* Sed tantùm de contumacia, &c.

CAPUT XV.

DE BANNO EX CONTUMACIA proficiſcente.

SUMMARIA.

1. *Contumaciæ pœnis ſunt attingenda.*
2. *An contumacia ſ[illegible]*
3. *[illegible] contumacia, reus abſolvitur [illegible] adverſario.*
4. *Contumacia [illegible]*
5. *An bannum [illegible] honor [illegible] manſuetè.*
6. *Bannum [illegible] ſequitur proſcriptum, ut umbra corpus.*
7. *Bannum contumaciæ ex cauſa civili non [illegible] privatorum.*
8. *An bannum [illegible] ban[illegible] proli [illegible] diſtinguitur [illegible].*
9. *Certi [illegible]*

[illegible] quam [illegible]

10. *An bannum [illegible] per contumaciam [illegible]*
11. *Contumacia non [illegible].*
12. *Argumentum [illegible] ad minus [illegible]*
13. *[illegible] parendo eſt.*
14. *[illegible] civilitatis.*
15. *[illegible]*
16. *Bannitus [illegible] pravet.*

1 Civiliana † pœnis eſſe attingendam dicit [illegible] ciarum, cumprimis [illegible] [illegible] Quorum fugere eſt, & [illegible] vel conſcientiæ [illegible] calumniæ, de [illegible] nonnihil quoque [illegible] Quæ in cauſa [illegible] ut plurimum eſſe [illegible] & [illegible] qui vel [illegible] [illegible] æquivocatione, [illegible] præ[illegible] *[illegible] lib. 2. de pa[illegible] publ. [illegible]* [illegible]

num utriuſque & delicti & contumaciæ quoad effectum & pœnam, quam
ſententiam [illegible] non poſſumus, quanquam enim contumaciam † [illegible] lo- 2
quendo delictum haud immerito appellare poſſimus, *Angel. Aretin. in tit.
qui dominus judex, num. 24. §. quæro an contumacia &c. pag. mihi* 94. quia pro-
pter contumaciam pariter ac delictum bannitus impunè occiditur, *vide Bart.
in l. omne, §. de re milit.* non tamen revera delictum eſt, *gloſſ. in c. ex literis, ext. de
conſtit. vide gloſſam retentam, ab Auguſtino Arimin. in d. tit. qui dominus ju-
dex in addit. ad Aretin. num. 27. Alex. vid. ab Imol. in l. 1. §. ad crimen ff. de pub.
judic.* hanc afferens rationem, quia contumacia non reperitur connumerata
inter publica judicia, [illegible] deliĉta privata, *arg. l. 1. & totius tituli, ff. ſi quis
jus dicenti non obtemp.* [illegible] itaque bannum ex utravis illa cauſa profici-
ſcens, adeò ut [illegible] contumaciam proſcriptus & captus non poſſit, ut
ille ob maleficium, [illegible] puniri. (1.) Quia purgari poteſt contumacia, qua
diluta † quoque abſolvi reus deberet etiam nolente adverſario, *text. in c. ex lite-* 3
*ris, ext. de [illegible] l. 2. C. de pœnis ubi Dd. l. ſancimus, C. de judic. argum. l. contu-
macia ab [illegible], Dd. ff. de re milit.* ratio eſt evidens, quia bannum ob con-
tumaciam indictum ad ſimiles [illegible] cauſæ reſtringitur, neque ultra eam con-
ſiſtit, ut ergo contumacia purgatâ & ſublatâ, effectus vel pœna contumaciæ
quoq; elidantur, *d. c. ex literis. Marant. in Spec. aur. part. 6. de contumac. p. mihi
215 [illegible] c. 6. n. 4.* Proinde *Aretin. d. loc. tradit.* Quod facile ſit judici abſ-
ſolvere reum a contumaciæ reatu, adeoq; banno, quia, ſubdit, contumacia † 4
æquiparatur mulctæ, *gloſſ. in l. 1. §. ex hoc, ff. de vent. in poſſ. [illegible] in l. 1. ff. de admi-
niſt. tut. vel cur. in princ. Aretin. d. loc. ibi.* Ex quo ſequitur, quod ſicut mul-
ctam impoſitam propter paupertatem ſine conſcientia vel conſenſu fiſci vel
ſuperioris poteſt remittere præſes provinciæ, ita etiam † bannum intellige 5
contumaciæ. Hinc in caſu & cauſa banni propter contumaciam immiſſio tal-
tem decernitur in bona banniti donec contumaciam purgaverit, *c. prout ubi
Canoniſtæ. de dol. & contum. & l. conſentaneum, C. quom. & quand. judex.* [illegible]
enim advertendum eſt, quo pacto nempe annotatio bonorum rei abſentis
ſucceſſit vice ſurrogationis in defectum banni, juncta immiſſione in bona banni-
ti, quod (bannum) infligere non poteſt magiſtratus ſuperiorem recogno-
ſcens, qua de re capite antecedenti. Cæterum in bona delinquentis facta im-
miſſio [illegible] durat, donec plenaria ſubſequatur abſolutio, nec non reſtitu-
tio cum [illegible] decreta, *Gail d. cap. 6. num. 8.* (2.) bannum
delicti † adeo conſtringit & afficit bannitum, ut & pœna, quæ proſequitur eum 6
ut umbra corpus ſequitur, ut qui mortem & capitale ſupplicium meritus erat
dum pœnam evadere satagit judicis, haud immeritò tradatur ſupplicio priva-
torum, quod paulò aliter receptum conſtat de banno contumaciæ, nam ex
hoc capite † condemnatus non ita exponitur executioni ſingulorum [illegible] 7
[illegible] de Marſil. in pract. crim. §. poſtquam, num. 14. Alexand. in l. [illegible]

ff. ſo. ut. matr. neq; hic ſimiliter adverſatur. Quod ſcribit *Gail. d. lib. 1.* [illegible] *cap. 5. num. 13.* Nempe contemptum Cæſaris [illegible] eſſe [illegible] contumaciæ nõ ſecus ac delicti, exponatur periculo & ſupp[illegible] *c. cordi. 6. §. de appell. in 6. l. 9. ff. de iuriſd.* Reſp. Fateor [illegible] eſſe deſpectum ſummi principis vel Cameræ, at quo colore [illegible] deſpectum revera dixeris ante inſtitutam & abſolutam purgandi [illegible] diſcuſſa patebit demum de dolo & proæreſi delinquentis [illegible] majeſtatem Cæſaris, remoto dolo [illegible] pœna delicti [illegible] dolus eſt radix omnis reatus reſpectu pœnarum, [illegible] *Olne* [illegible] *proem. claſſ. ad foreuſ.* Deinde ſi par utriuſq; banni eſt effectus quoad [illegible] quidni perinde tenebitur tranſigere cum procuratore Cæſaris vel Fiſcali Ca-
8 meræ eius contumaciæ, † quam reus delicti [illegible] maleficium tranſigere & in gratiam procuratoris redire tenetur, [illegible] *mer. part. 3. tit. 46.*

Adde quod banni ſententia ob contumaciam fit [illegible] *Bald. in l.* [illegible] *C. de hered. l. inſtit. Gail. 2. de pp. cap. 6. num. 3.* Ut [illegible] tem condemnatur, ſequitur ſententia definitiva. *Conſtit.* [illegible] *infra, c. de ſentent.* Sed inquis, banni ſententia non conſiſtim [illegible] uti apparet ex tenore ſententiarum banni. Reſpondeo, [illegible] ſubeſt inter utrumque bannum, certe morti addicitur & quaſi mortis reus condemnatur bannitus, quod ſat ſuperq; evincunt [illegible] clauſulæ: Er auch ſein Leib vnd Gut dem Kläger vnd [illegible] Neq; refert quamquã non lictoris manu modo [illegible] tum ex [illegible] hic utrum hodie vel intra [illegible] [illegible] condemnatus, quoniam pœnam [illegible] præter [illegible] afflictionem adferre & ſæpenumero mitigationem pœnæ [illegible] *Tiraquell. in tr. de mitig. pœn. cauſ. 41.*

Allegatam [illegible] quod attinet, ipſam [illegible] teriam [illegible] eſſe nemo non videt, [illegible] inter [illegible] contumaciam in criminali, vel [illegible] pacis publicæ, & c[illegible] licam [illegible] Quod etiam [illegible] banni proceſſe, vel purgationis [illegible] ventilata, contumacia ut plurimum [illegible] res eſt ex- [illegible] locatori. In der Pfandation Sache N. contra [illegible] N. [illegible] ſich in den Landfriedbrüchigen Rath [illegible] Brief [illegible] verkündet vnd beſchehen wiſſen / [illegible] Landfriedbrüchiger reden ſchuldig [illegible] hanc contumaciæ ſpeciem [illegible] contemptum potius [illegible] præſeferr [illegible] quod ſine procul dubio imperii ordinatione, [illegible]

[illegible]

accipiendæ. Occaſio ſapientia eſt, ait *JCtus in l. 168. ff. de R. J. quæ præbe- [illegible] [illegible] Ca[illegible]r. conſil. [illegible]1. volum. 2. in fine, ubi ait* Quod cu- [illegible] [illegible] [illegible] honorem abſolutione, quam ex [illegible] [illegible] *[illegible] c. B[illegible] in tit. de [illegible] deſenſ. n. 2.*

Et longè [illegible] [illegible] eſt, propter miſericordiam reddere rationē, quam propter nimiam [illegible], [illegible] quærendæ ſunt ignoſcendi cauſæ non puniendi occaſiones, ait *Pined. in Job. cap. 2[illegible]. verſ. 17. num. 1.* Hinc temperamentum omnium [illegible], Græcis ἀν[illegible] dictum, qui legum rigorem in quantum [illegible] quanquam verba eſſent improprianda, nec dubium eſt quin ſi ſtatus imperii interrogati fuiſſent, de verâ pragmatica tum ejuſmodi legum [illegible], non quod verborum cortex, ſed ſenſus medulla dictitat, reſpon[illegible] fuiſſent. *[illegible] Marc. [illegible]. 1. quæſt. [illegible] l. 1[illegible]. ff. de ll.* Quod idem *Gail. [illegible] obſerv. [illegible]* actionem triplicem habere in contumaciam procedendi [illegible] banni, &c. non quoque hæc ſententia ἀπλῶς dici debet neq; enim [illegible] eſt Cæſaream majeſtatem ſi qui contemptus ſupremæ dignitati ex contumacia cauſæ civilis oriatur, ejus vindictam committere [illegible] privatorum [illegible]. Ad quid enim Fiſcalis vel procurator fiſci? canem ignavum ipſum jacere voluiſſe. Sola Fiſcalis aviſatio hic præſtat & ſufficit quæ vice denunciationis eſt, quid ſi ipſe famam Cæſaris vel dignitatem imperii negligat. Et quid temerit[illegible] privatum cum diſpendio ſ[illegible] [illegible], banni inſtantiam una cum [illegible] principali ſeorſim proſequi, ſi quod tamen innuit ille [illegible] fractæ pacis, [illegible] restitutionem ablatorum & reſtitutionem damni dati. (2) Deinde ad pœnam, ſiquidem ſtatus imperii, adeoq; bannum infligendum [illegible] dict[illegible] ratio.

H[illegible] divi Imperatores Honor. & Theod. in l. 3. C. de requir. reis diſertè diſtinguunt inter contumaciam ex cauſa civili & criminali ſubortam, adeò ut nedum illa, ex civili cauſa dependens contumacia, infamet reum cōdemnatum, *l. infamem ff. de publ. judic. Felin. in rub. de re judic. n. 15. Bald. in [illegible] ſuper eo, nu. 4. ext. de teſtib. [illegible] dicit:* Bannitos de jure civili † poſſe quoq; teſtimonium fer- 13 re, inde, quia tale bannitum juris infamiam non irrogat, cum potius fingatur [illegible] quam convictus. Contumacia † autem non infamat *Campeg. de* 11 *[illegible] Alber. de R[illegible] in tr. de ſtatut. part. [illegible] quæſt. [illegible] 2. [illegible] o.* ubi atteſtatur [illegible] hanc ſententiam [illegible] communiter receptam [illegible]. *Kirchov. cent. 1. [illegible] 2. [illegible] § [illegible] quæſt. [illegible] Menoch. de præſumpt. reg. 22. Farin. [illegible] lib. [illegible] 16. n. 126. & ſqq.*

[illegible] ad infamiam [illegible] contumacia bannum ex cauſa civili reſultans [illegible] naturalem, cui obnoxii redduntur banniti ex [illegible] argumento deducto † à majori ad mi- 12 nus [illegible] formatur deſtructive & negative, [illegible] nedum probabile ſed & neceſſarium in jure argumentum, *Eberh. in top. in loc. à majori*, neceſſario [illegible]

13 conſequentia eſt, cujus famæ † parcitur, ejus vitæ multò magis parcendum [illegible] l.38. §.[illegible] *ff. de adult.* quo ſpectat ætiologia, ſi id de quo magis videtur [illegible] ſe, non [illegible], nec etiam id, de quo minus, *vide Eberhard. d. loc. n.* [illegible]

14 Cautela itaque, † quo ſecurior ſit reus adverſus pericula [illegible] primum, banno in contumaciam decreto, petat ſalvum conductum, [illegible] tulos ad purgandum producat, prout regulare ſolet dari conſiliariis [illegible] tantibus & fugientibus, ut impetrato ſalvo conductu, ſine mora defenſionales exhibeant ordinario judici, ſive ſuperiori qui ſecuritatem dedit, ſive inferiori, qui perſequitur delinquentem exercens imperium in [illegible] una cum copia [illegible] cultata, gratia vel ſalvi conductus pridem impetrati. Quam practicam quoque tradit, *Clar. d. q. 71. verſic. præterea quæro, &c.* ut banniti [illegible] ad teſtificandum in delictis exceptis, ubi perſonæ inhabiles admittuntur ad teſtimonia, non niſi ſalvo conducto ſibi conceſſo accedant ad judicia, [illegible] *tit. de citat. num.* 37. hanc cautelam auget, & ſuadet, ut bannitus curet publicari ſalvum conductum per diploma aliquod [illegible] [illegible]

15 verbio circumfertur: Ut ſi quid incaute † factum ſit, caute [illegible] *fin. ext. de ſacra. non reiterand.* Porro quod [illegible] *l. 17. C. de teſt. l. 94. ff. de R. J. l. qui extrinſecus* [illegible] *l. ſi pupil.* [illegible]

16 *geſt.* nota hic: Quod bannitus teſtificans, † non integram [illegible] præbeat, *Menoch. de præſumpt.* 1. *q.* [illegible] *num.* 23. *Farinac.* [illegible] *tit.* 6. *q.* 56. ac quidem generali inquiſitioni [illegible] ſpecialem inquiſitionem, *Boſſ. de inquiſ. n.* 4. & [illegible] 4.

CAPUT XVI.

DE PURGATIONE CONTUMACIÆ.

Summaria

1. *Ina[illegible] causa [illegible]*
2. *Sup[illegible] impoſitione [illegible] citari.*
3. *[illegible] audiri debet [illegible]*
4. *Cauſa purgationis [illegible] contumacia eſt [illegible]*
5. *[illegible] in bannum de [illegible] debet.*
6. *[illegible] pacem de [illegible] in bannum.*
7. *[illegible] jure neceſſitatis & amicitia banni [illegible] non banni pœna, ſed [illegible] mul[illegible]*
8. *[illegible] probanda.*
9. *[illegible] contumacia [illegible] ſat.*
10. *[illegible] viarum a latronibus [illegible] purgat contumaciam.*
11. *[illegible] tempeſtas [illegible] ſtatim, ut qu[illegible] [illegible]*
12. *[illegible]*
13. *[illegible] & [illegible]*

[illegible]

14. *Contumaciam purgat cum [illegible] ſit [illegible] provocari [illegible] perſonis [illegible] contumaci.*

15. *De [illegible] recuſator*

16. *[illegible] Dd. [illegible] in cauſa criminali [illegible] officio [illegible].*

17. *[illegible] tur*

18. *An [illegible] delega- [illegible]*

19. *Quæ exceptiones contra [illegible] purgant [illegible]*

21. *[illegible] comparuit, [illegible]*

21. *Contra [illegible]*

22. *[illegible] ad purgat [illegible]*

23. *[illegible] condem- [illegible]*

24. *[illegible] contumacia [illegible]*

25. *[illegible] excuſat à contumacia.*

26. *[illegible] pauper [illegible] ex ærario publico [illegible]*

27. *Ægritudo animi excuſat à contumacia.*

28. *Simplicitas & ignorantia juris an excuſet à contumacia.*

29. *Abſentia judicis contumaciam purgat.*

30. *Cum quis citatur à duobus judicibus, [illegible] coram [illegible] compare re debet, nec exinde incurrit in contumaciam quoad inferiorem.*

31. *Pœna contumaciæ dolum præſupponit.*

32. *[illegible] inhærens cordibus humanis, juramento purgat [illegible] manifeſtabitur*

33. *Innocentia juramento probatur.*

34. *[illegible], ne juſtitia fiat brevis de [illegible]*

35. *R[illegible] vincula [illegible] debet [illegible] ad docendam [illegible] innocentiam.*

36. *Non omnis fuga, [illegible]*

37. *[illegible] probationem [illegible]*

38. *Demonſtrata innocentia [illegible] declaratoriam*

39. *[illegible] ba- [illegible]*

NE cauſa inaudita condemnentur rei, probè & decenter conſtitutum eſt, [illegible] poſt [illegible] bonorū [illegible] 1
[illegible] cum [illegible] ſuper mulctæ † impoſitione [illegible] & [illegible] 2
[illegible] novos [illegible] proceſſus, *argum. l. 1. ff. ſi quis [illegible]* necnon ſententia definitiva *l. 2. §. 1. ff. ſi quis in jus vocat. [illegible] ff. de legat. 1. [illegible] in c. quoniam [illegible]* quantò magis in hac [illegible] & [illegible] vita & [illegible] extremum deducitur [illegible] *de pœn. in [illegible]* &c. & *cap. 8 num. [illegible]* ob contumaciam † [illegible] executione [illegible] exceptione [illegible] debet, *Spec. in tit. de [illegible]* cui nec obſtat ſententia declaratoria [illegible] ſuper [illegible] probationibus & [illegible] nunquam [illegible] *de [illegible] conſanguinei, num. [illegible] de re jud.* nec abſentia rei [illegible] non producentis nec innocentiam deducentis, modo [illegible] ratione contumaciæ [illegible] nihil [illegible] *in l. 33. §. 2. ff. de procurat.* 3

Cauſæ

4 Cauſæ verò purgationum † ſunt. 1. Adverſa valetudo *l. 13. §. 11. ff. de re iudic. l. 60. ff. eod.* qua ſic impeditur reus, ita angitur & cruciatur [illegible] corpore erecto ſtare poſſit coram tribunali; levis quippe febricula & [illegible] na vetus in nulla ſunt conſideratione, *Marant. in Spec. aur. de contumac.* [illegible] *pag. 215.* reſtringenda autem hæc eſt ſententia ad ſubjectam materiam & cauſam in qua non admittitur procurator, uti in præſentiarum *Bart. & Alex. and. in d. l. 60. Marant. d. d. loc.* ait receptum eſſe, ut [illegible] mittat [illegible] cum fide unius Medici, vel obſtetricis, ſi [illegible] gravida [illegible] *Gylman. in prejud. Camer. tom. 2.* [illegible] *pag. mihi 223.* ubi obiter [illegible],
5 quod licet mulier † in contumaciam condemnari poſſit, non tamen in bannum ob contumaciam declarari debeat, niſi in cauſa criminali, ubi in contumaciam delictum probatur per teſtes, *Gail. de pp. cap. 8. lib. 2. num.* [illegible] jure civili in cauſa contumaciæ, extra banni proceſſum, [illegible] procedat in cauſa principali, uſq; ad deciſionem cauſæ, *Gail. 1. obſerv.* [illegible]
6 hæreim, enim in bannum † declarari ex cauſa fractæ pacis publicæ, idem refert *de pp lib. 1. cap. 1. nu. 34.* quidni igitur in cauſis [illegible] exceptis [illegible] cum Sodomiæ proditionis vel veneficii [illegible] comparere nolit, ubi tamen hoc moderamen ſervanum [illegible] ſcribendi formula. Sed limitato quodam reſpectu & reſcripto [illegible] cearur, qua de re *idem Gail d. c. 1. num. 37.* Quemadmodum [illegible] placuit eos,
7 qui jure amicitiæ † vel familiaritatis juverunt [illegible] vel [illegible] pacis publicæ, non in bannum, ſed in graviorem mulctam declarari debeant, [illegible] quod temerariè potius [illegible] ſe criminis [illegible] repentè in convivio & inter pocula ſine ulla deliberatione & [illegible] poſito delinquendi, *Gail. d. loc. num. 46.*

8 Multo minus, (ut ad rem redeam) in contumaciam † declarari [illegible] reus in termino ſcripto vel alia [illegible] certiorem [illegible] judicem de morbo, quo corripiatur, niſi morbus fictus & ſimulatus [illegible] morbi gravitatem inſtrumento publico vel alia forma [illegible] judici. *Marant. d. loc.*

2. Excuſat, & contumaciam purgat morbus parentum, filiorum vel conjugum [illegible], qui ſunt loco parentum vel liberorum, *Alex. in d. l. 60. ff. de re judic.* [illegible] morbus vehemens & acutus continuam deſiderat curationem & ſervitium hominis nec citati, dum abſunt, [illegible] credere nequeant [illegible] qua de cauſa quoque excuſari poſſunt [illegible] & [illegible] qui dum comparere tenebantur citati, affuêre ægrotis, & [illegible] ſuſſicerent, & [illegible] adhibuiſſent, æger interea [illegible] dubio periculo [illegible]
9 [illegible] † [illegible] quæ legem neſcit, a pœnis contumaciæ excuſat, *vide* [illegible] *de non cauſ. 3. quæ* [illegible] *regulariter legibus* [illegible] *citur. Idem d. loc. n. 4.*
10 3. Excuſat vis major, † ut [illegible] a [illegible], piratis, [illegible]

Bibus

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ſtibus, ut tuto accedere non valeat citatus ad tribunal judicis, *Clem. paſtoralis,*
§. Piſana. de re jud. deinde tempeſtas, † vis fluminis & inundatio aquarum, 11
Jaſon. in l. 1. §. ſi [illegible] dicentis non obtem. Bald. in l. ea quæ, C. quom. & quand.
judex, quod impedimentum etiam attenditur fatalibus introducendæ appel-
lationis effluxis ad reſtituendum in integrum appellatorem, *Bald. in l. 2. C. de*
temp. appell. præſertim [illegible] ait textus, l. 5. C. de appellat. ad quem appellaſti, ſi
non ullo negligentiæ veſtræ tempus, quod ad reddendos apoſtolos præſcri-
ptum eſt, exemptum eſſe animadverterit, ſed ex fatalis caſus neceſſitate diem
functo eo, qui eos perferebat, id accidiſſe cognoverit, juxta perpetui juris
formam, deſiderio veſtro medebitur, *vide Gail. 1. obſerv. 140. num. 6.* ubi exi-
ſtimat, judicem non inique facere, ut verba ejus ſunt, ſi appellationem hoc
caſu omiſſa reſtitutione admittat ad evitandos circuitus, quæ juris beneficia
vel remedia tam in cauſa criminali quam civili & cauſis injuriarum, parti pe-
riclitanti conceduntur, *Joan. Maurit. de reſt. in integ. c. 150.*

4. Contumaciam purgat nuncii † impedimentum, qui ut citationem [illegible] 12
go a expediret ablegatus, in itinere vel morbo correptus, injuria & vi tem-
peſtatis inundatione fluminum retractus, latronum vel hoſtium præſentia
territus in termino comparitionis, commiſſa expedire non valuit, *Menoch.*
de arbit. jud. 2. caſ. 153. arg. l. 5. C. de app. ibi qui eos perferebat, & cum hæc cau-
ſa ſimiliter facit, ne inde fatalium lapſus noceat parti, cui non poteſt im-
putari culpa, *Gail. d. loc. nu. 7.* quò ſpectat regula, quod non valenti agere non
currat præſcriptio, *l. 1. §. ne autem, C. de ann. præſcript. l. 1. ff. de diverſ. & temp.*
præſcript. Sic Notarii morbus vel mors, non nocet appellanti ob defectum
inſtrumenti appellatorii, quod intra fatalia introducendæ appellationis pro-
duci non potuit, quo caſu placuit tranſumptum protocolli exhiberi judici,
vel ſi ante confectionem inſtrumenti decedat Notarius, tabellio alius ex
tranſumpto vel protocollo faciat inſtrumentum, vide prolixe *Menoch. de*
arb. judic. caſ. 187.

5. Contumaciam purgat † metus concuſſionis, vel alterius vis ma- 13
joris, carceris vel impetus violenti, denegato reis ſalvo conductu, *Bart. in l.*
fin. num. 11. ff. de reſtit. in integ. Menoch. d. caſ. 153. n. [illegible] quò pertinet deciſiva
regula: Quod nemo teneatur eorum † judice ſuſpecto litigare, *authent. ſi ve-* 14
ro, C. de judic. Gail. 1. obſerv. 33. Spec. de recuſat. judic. §. 1. Vel ſi in eo loco ju-
dicii minus ſecuro vel tuto ubi vel hoſtium incurſus timendus ſit, vel peſtis
& alia lues contagioſa graſſetur, *Menoch. d. loc. Fr. p. a in tr. de peſt. in prælud.*
num. 8 & ſeq. Gail. 1. obſerv. 23. num. 7. Cauſæ vero recuſationum probari de-
bent in continenti coram arbitris vel Commiſſariis ad hoc a ſuperiori conſti-
tutis, teſtibus vel juramento, *Gylman. in decis. Camer. pag. 295. tom. 2. in ſym-*
phor. Gail. d. loc. nu. 14. ubi exiſtimat juramentum calumniæ ſufficere pro ple-
nariâ recuſationis, cauſæq; ejuſdem probatione, neq; enim priuſquam de

cale-

15 calumnia † juraverit recuſator, audiri debet, ne temeraria ſuggeſtione tradu-
cat judicē judicium & partem adverſam eludat, quod concedi non debet, nam
maliciis hominum eſt reſiſtendum, *l. in fundo, ff. de rei vindicat.* In cauſa cri-
16 minali cumprimis ponderanda eſt recuſatio, quam plures † non admitten-
dam contendunt, ne anſa præbeatur reis quocunque prætextu ſuffla re lites
criminales & dum temere eligit, neſcire qua tādem arbore ſuſpendatur Mar-
colphi exemplo, quod inducit *Schurff. aliquoties in conſiliis.* Cautela hic pro
judice erit, ut decernat delegationem, quæ enim recuſationis [illegible] oppo-
nuntur ordinario, contra delegatum opponi non poſſunt [illegible] mutatione
17 † perſonæ vicium aboleatur, *Gylman. in d. deciſ. pag.* 118. An vero poſt litem
18 † conteſtatam delegari poſſit cauſa? ℞. quod ſic: cum enim quocunq; in parte
proceſſus recuſatio judicis juſta admittatur, *l. apertiſſimi ubi* [illegible] *& Do. C.
de judic.* ecquid obſtat; cur judex recuſationem ſubolens non æque poſſit
tunc temporis delegare, quam ante litem conteſtatam nulla hic refragatur
diverſitatis ratio.

19 6. Contumacia purgatur exceptione † non ritè & legitime factæ ci-
tationis, *Maranta in Spec. aur. part. 6. pag. mihi* 235. Quæ ergo exceptiones
opponuntur efficaciter contra citationem non decēter expeditam, ipſæ quo-
que ad contumaciam purgandam præſtant, *Marant. d. loc.* de exceptionibus
iſtiuſmodi, *vide Gail. 1. obſerv. 48. 49. 50. 51. 52. 53. Specul. Marant. cit. loc. n. 6.*
ibi: potes etiam addere omnes caſus, quos poſui ſupra *de citat.* & omnes ca-
ſus generaliter in quibus citatio non valet, vel citatus non comparere tene-
tur, &c. *hæc Maranta d. loc.*

7. Contumacia purgatur eo ipſo, quod accuſator delator vel actor
20 ipſe † non comparint, vel ſiquidem apparuit, & non accuſaverit contuma-
ciam, *l. properandum, §. & ſiquidem. Cod. de judic. Bart. in l. conſentaneum, C.
quom. & quand. judex. &c.* adeò ut nedum proclama ex officio judex decernere
21 poſſit, quia de jure contra contumacem nunquam proceditur, † niſi a in-
ſtantiam, *partis d. l. properandum. §. 1. authent. qui* [illegible] *C. quom. & quand. ju-
dex, &c.* ubi & hoc admonendum eſt, quod non [illegible] accidentur
contumacia, quam trina citatione vel una pro [illegible] facta purificat, &
termino parendi pereemptorio & præjudiciali effluxo, *Marant. d. loc.* Aliàs
actore non comparente in termino, citatio circumducitur & requiritur nova
citatio. *l. p*[illegible]*, §. 1. ff. de judic. Bart. in l. ex quacunq;* [illegible]
non. ser.

8. Contumaciā purgat majoris cauſæ occupatio [illegible] textus *l. 5. §. 2. ff. de*
22 *jud.* [illegible] vero hic cauſa major dicatur † judex arbitrabitur, [illegible]
ner[illegible] relinquit *Menochius*, quale impedimentum [illegible]
nem a contumacia neceſcatur, *de arbitr. judic. caſ.* 113. [illegible]
[illegible], quandoquidem contumacia non [illegible] & [illegible]
cur pa-

comp[illegible] in [illegible] committatur, quia contumacia, contemptus [illegible] dicentis dicitur, [illegible] remoto dolo & affectu de non contemnendo magiſtratu, contumaciam quoque ejusque pœnam ceſſare, non dubitandum ſit, *Petr. Roiz. in deciſ. Lituan. deciſ.* 4. ubi admonet judices † ne nimium ſeveri ſint adverſus abſentes, animadverti enim, inquit *d. loc. num.* 4. multos ob moram venia dignâ bona causâ cecidiſſe, non ſine domeſtici doloris memoria, quodam qui in meo famulatu eſt, damno litis adverſus leges coërcito, qui nihil aliud admiſerat, quam quod ipſo temporis puncto, cum ejus cauſa ex albo pronunciaretur, judicio non adfuiſſet, is poſtea ut in integrum reſtitueretur, beneficio videlicet ætatis, cauſa multùm ac diu ſcripto à me defensa, ægre ſum conſecutus, hæc ille. Cæterùm, quæ cauſa major dicatur? *vide Pariſ. conſil.* 102. *vol.* 4. *Roiz. d. loc.* ubi captuiam vel cuſtodiam citati injuſtá inter cauſas graves vel majores recenſet, quæ contumaciæ purgationem quoq; meretur, *l.* 2. *§. fin ff. ſi quis caution. ibi à magiſtratu retentus, & retentus ſine dolo malo &c.* ubi cautela eſt, † ut judicanti ante ſententiam hoc impedimentum notificetur, qui ſiquidem per ignorantiam contra impeditos judicaverit, valet quidem ſententia at reſcindi debet impedimento poſtea probato, *Pariſ. d loc Roiz. citato, num.* 28. *Marant. citato loco, n.* 6. cauſa major quoq; non immeritò dicetur, ſi quis municipalis muneris cauſa, ſine ſuo dolo malo impeditus in judicio ſecundum ſuam promiſſionem non ſtetit, *ut ait text. l.* 2. *§.* 1. *ff. ſi quis caution. &c.* 23 24

9. A contumacia excuſat paupertas, † quæ alias bonæ mentis ſoror dicitur, *Eberhard. a Weih in tract. de ſpeculis eorumq; origin. pag.* 222. *vide Marant. d. loc. de contumac. num.* 5. Placuit enim *ait Roiz. in dicta deciſ.* 4 *n.* 51. inopiæ eandem excuſationem tribuere, quam jurisjurandi, datæq; fidei religio & fidejuſſorum neceſſitas meruiſſet, quæ paupertas juncta nuditate corporis, ut abſque verecundia citatus non poſſit comparere, uti loquitur *Marant. dict loc* ſimilis eſſe dicitur adverſæ valetudini, *in l.* 1. *§.* 6. *ff. ſi quis caution. &c.* quoniam egeſtas & hæc in jure habeat indulta, ut fatalia appellandi neglecta haud noceant inopi, quo minus ſententiam judicis iniquam impugnare poſſit, *Marſil. l.* 1. *§. preterea, n.* 87. *ff. de qq.* in Camera imperii autem priuſquam inhibitio decernitur ad inſtantiam pauperum, qui juramentum paupertatis præſtiterunt, per compulſoriales avocantur acta prioris judicii, ut videat referens utrumne calumnia vel jure pauper appellaverit, *Chriſtoph. Schwanman. de proceſſ. lib.* 2 *c.* 7. *in fine.* in cauſa criminali † æquè ex fiſco ſumptus liti conferendi ſunt pauperibus uti in vincula eos conjectos ſuſtentare magiſtratus tenetur, *l. judices. Cod. de Epiſcop. audient Roiz. d. deciſ.* 4. *num.* 287. quibus etiam tributa remittuntur, *l.* 1. *ubi Bart. C. de ann. & tribut. lib.* 10. *Rom. in l. ſi verò, §. de viro, ff. ſolut. mat.* imò pauperibus una cum divitibus una vice & momento citatis, cauſæ pauperum audiri prius debent ac 25 26

decidi, quam divitum, quæ ſententia Ludovici Pontani [illegible] poſt veteres [illegible] *Roiz. d. loc. quam tamen quis haud facilè perſuaſerit judicibus n[illegible] [illegible] bus non lingua modo ſed manus & aures etiam venales ſunt, ſolis illis ap[illegible] [illegible] numerare poſſunt, &c. hæc ille, n. 292.*

27 10. Ut contumaciam purgat † ægritudo corporis, de qua ſupra, [illegible] mentis imbecillitas, animi ægritudo, quam dementiam & furorem appellamus, excuſationem meretur, *l. 2. ubi Dd. §. ſi quis judicio, ff. ſi quis cautione*, [illegible] *nuſte & prolixè Roiz. d. deciſ. 4. num.* 319. fatuos & furioſos mortuis comparavit, *Bald. in l. humanitatis, Col. 4. C. de impub. & alior. ſubſtit.* Nonnulli hic annumerãt ruſticitatem vel nimiam juris imperitiam, ut ſiquidem citati eo in loco degunt ubi non poſſunt conſulere peritiores, *Menoch.* [illegible] enim ſine dolo & affectu contemnendi præcepta judicum, haud [illegible] contumaciam, *argum. l. 53. ff. de re judic. Eberhard. in top. in loc. nu.* 8. ibi [illegible]

28 lo te non ignorare, quod licet error vel ignorantia juris † excuſet mulierem & ruſticum, quando non potuerunt conſulere peritiores, [illegible] omnibus his, quæ ſunt, inducta pro forma actus & quæ [illegible] rigorem judiciorum inductum ob publicam utilitatem, allegans *Salycet. in l. 1. C. de jur. & facti ignorat.* ſtatuentem, quod hoc caſu ob lapſum termini probatorii ruſticus vel mulier debeant reſtitui in integrum. Quando autem ſubdit *Eberhard. d. loc.* mulieres vel ruſtici potuerunt conſulere peritiores, & non conſuluerunt, certum eſt, quod non excuſentur etiam in non inductis pro forma & ſolennitate juris, qui enim ad ſylvam vadere poſſunt pro lignis & a[illegible] tatem pro indulgentiis impetrandis, meritò quoque adeant advocatos & juris peritos pro conſiliis, *Bald. & gloſ. in l. juris ignorantiam, C. qui admitti* [illegible] *vide Joan. Baptiſt. Bov. de præſcript. urb ſtat. §. 2 & ſeqq.* Ignorantia [illegible] vel ordinationis provincialis quoq; hic cõſideratur, ſiquidem nondum promulgata ſunt ſtatuta vel aliquo in loco publicata non pervenerunt ad notitiam ſingulorum, ſic cum nuper in cauſa aliqua ardua fatalia appellationis introducendæ eſſent dilapſa, idcirco fuêre [illegible] decreti proceſſus, quia [illegible] ceps illius curię ſucceſſione ab in[illegible] [illegible] ſibi acquiſiverat novos ſubditos [illegible] bus nondum conſtabat quicquam de [illegible] propter ignorantiam hanc probabilem, abſque [illegible] beneficio illi nihilominus

29 [illegible] Nonnulli nec immeritò huc recenſent † abſentiam judicis, *Mynſ. d. loc. ibi* Si in ultimo perem[illegible] cum non regeretur [illegible] [illegible] judicis, quia [illegible] contumax reus non apparens, hæc ille. Inde infertur, ut quoties [illegible] per judicem [illegible] litigatori [illegible] [illegible] vel probandi [illegible] labantur, id non parti ſed judici [illegible] bent, ne aliene [illegible] prægravetur, [illegible] C. [illegible]

30 Deniq; præmiſſis [illegible] um cauſis addunt, ut [illegible] [illegible] tuo, in quo [illegible] [illegible]

dicem ſuperiorem & inferiorem ſimul, excuſetur is à contumacia in curia nondum ſeſe ſiſtens coram ſuperiori, *l.54.§ 1 ff. de judic. Marant. de contum. d.loc. nu.4. pag.* 2. Atque hæ ſunt purgationum ſpecies, quas jura diſerta prodiderunt, nec dubium eſt, quin hæ ipſæ cauſæ bannum ex contumacia propendens evacuare & malum imminens, ut minimum ſuſpendere jure debeant. In cauſa criminali & bannum & capturam avertat contumacia purgata juris ratio perinde dictitat, ne abſque dolo, quem contumaciæ † requirit 31
executio, condemnetur immeritus, cum tamen à dolo excuſet cauſa quævis, calliditatem & culpam haud præ ſe ferens; neq; enim dum admodum indulgetur reis, malitiis eorum indulgeatur, *Anton. Blanc. de judic. pag. mihi* 379. ad calliditatem vero, quæ † in animo hominum radicitus hæret purgandam, 32
æquè purgationis juramentum admittitur, *l.6. §.5. ff. de his, qui notant. infam.* non ſecus ac ſi in injuriarum cauſis rei, qui prætendunt animum inculpatum, jurejurando ſe purgant, ſcilicet, quod verba, quæ injuriam ſpirant, non conviciandi animo protulerint, *Gail. 2. obſerv. cap.* 106. ubi docet hoc juramentum non publice ſed privatim deferendum. At qualia quanta hæc adſertio alius arbitrabitur ratio purgandæ contumaciæ eſt, quod innocentia † juramento probatur, *d. l.6. §. 5. ff. de his, qui not. infam.* quò ſpectat trita regula 33
Quod judex in rebus obſcuris, licet reus non nullis turgeat ſuſpicionibus, ad juramentum purgationis adhuc debeat admittere, *Gail. d. loc. num.* 5. cum ſatius ſit dimittere nocentem, quam innocentem condemnare *per notiſſima*. Quin imo ex officio judex ad purgandum decernere citationem tenetur, quod in delictis gravioribus quoque receptum eſſe refert idem *Gail. 2. de pp cap* 1. *num* 1. nos ſtatuimus idem, excipientes delicta excepta, ubi purgationem admittere hoc pacto videtur prorſus ineptum, exoſa enim crimina hæc adeò ſunt, & deteſtanda, ut indiciis qualibuſcunque apparentibus, judex omiſſis illis prærogativis, etiam ſine ordine judiciario procedere poſſit eo uſq;, quo ad plenariam ſui motus inſtructionem pervenerit, & jam ad quæſtionem rigoroſam queat deſcendere. Quoad delicta non excepta dicendum hoc reſtat, ne, quoties ſub inquiſitione generali emerſerunt indicia urgetiora, quæ ſubſecuta inquiſitione ſpeciali, facili negotio probari poſſe videbuntur, criminoſi gaudeant communi & clementi illo juris beneficio, neq; enim juris ratio, vel æquitatis benignitas patitur, ut quando crimen ſeſe ipſum prodederit, neque enim malum latet diu, lat. *Tiraquell. de pœn. cauſa*, 51. *num*.17. Lites criminales ad cornicum ætates extendi, cum reipublicæ † interſit, ut qua 34
par celeritate, juſtitia fiat de improbis, ne delicta maneant impunita, *l.51. ff. ad L. Aquil.*

Sed quid ſi diffamatus dum veretur † vincula & carceres ſubterraneos, 35
nec non judicis concuſſionem, fugit, & conſtituit defenſorem ad innocentiam ſuam, docendam & purgandam juxta contumaciam audiri debeat? Re-

ſpondeo; Quod ſalvus conductus ex officio dari debeat reo pro [illegible], ne-
36 que enim fuga † omnis indicia parit, *Farinac. conſil. crim.* 1[illegible] *num* [illegible]. qui
adhuc comparere nolit, in contumaciam adverſus eum procedendum eſſe
exiſtimo, ad innocentiam vero ejus demonſtrandam nihilominus admittendum defenſorem, cum contumacia non niſi probationem fictam arguat,
37 *Hyppol de Marſil. in §. poſtquam, num.* 51. *Gail.* 2. *de pp. cap.* 8. ficta probatio †
autem admittit probationes in contrarium, *l. ſi is, qui C. qui teſt. fa*[illegible] *poſ. l. di-*
38 *vus. ff. de cuſtod. & exhib. reor.* & demonſtratio innocentiæ admittatur † etiam poſt ſententiam declaratoriam banni, *Spec. de accuſat §. ſequitur, n.* 2[illegible].
39 *Gail. d. loc. num.* 4. hinc ſtatuta † contumacem pro confeſſo habentia nunquam excludunt innocentiæ exceptionem. *Idem d. loc.* Et regula eſt. Quod actore non probante reus cauſa cadere non debeat, gloſſa. quam celeberrimam appellitat idem *Gail.* 1. *obſer.* 60. *num.* 8. *in l.* 1. *§.* [illegible] *n.* [illegible] *ſi quis jus d. non ob temp.* [illegible] *Menoch.* 2. *de arb. jud. caſ.* 28[illegible]. *Zaſ. in l.* 5[illegible]. *n.* 3[illegible]. *ff. de re judic.*

CAPUT XVII.

DE HIS, QVI INTERPELLANT ET INSTIgant magiſtratum ad inquirendum.

SUMMARIA.

1. *Inſtigator quis dicatur?*
2. *Cur judex ſeſe intromittere teneatur, inſtigatore exiſtente?*
3. *Iudex ſlec*[illegible] *pendens querelas inſtigatoris in ſyndicatum incidit.*
4. *Quando fiſcalis implorandus ſit ab inſtigatore?*
5. *Qua nota diſtinguatur inſtigator ab accuſatore & non denunciatore.*
6. *M*[illegible] *longè agitur cum inſtigatore*[illegible] *accuſatore.*
7. *Inſtigator non præſ*[illegible] *cautionem, nec in pœnas Turpilliani S*[illegible]
8. *Argumenta aliquot* [illegible] *diluuntur, &* [illegible] *incommoda inſtigatoris* [illegible]
9. [illegible] *fides habenda* [illegible] *inſtigatori*[illegible]
10. [illegible] *ratio e*[illegible] *moralium menſura.*
11. *In inſtigatores inquirendum eſt, cujus ſint famæ & vitæ?*
12. *Fama nonnunquam eſt* [illegible] *inſtigatorum.*
13. *Indiciorum g*[illegible] *vestibulum* [illegible]
14. *I*[illegible] *arbor* [illegible] *criminales.*
15. *Inquiſit*[illegible] *omnes proceſſus criminales influit.*
16. *An inſtigator citari debeat?*
17. *Clari ſententia rep*[illegible] *torem cum* [illegible]
18. *A*[illegible] *a querela inſtituta,* [illegible]
19. *Con*[illegible] *potest, ut inſtigator* [illegible] *partes veri accuſatoris.*
20. *Proteſtari poſſit inſtigator quod* [illegible] *accuſandi*
21. *P*[illegible] *eſt* [illegible] *intent*[illegible] *extendere* [illegible] *eorum dicta* [illegible]
22. [illegible] *ab* [illegible] *agere*[illegible]
23. [illegible] *perfecti admittunt f*[illegible] *clar*[illegible]

Eius

DIximus ſupra de triplici delatorum genere in cauſis criminalibus, aut enim denunciatores ſunt, qui ſtrictè ita dicti, & delatores nuncupantur, aut inſtigatores vel accuſatores, qui adducunt judicem, ut inquirat & indicia competentia quibus tandem veritatem cauſæ, reique nocentiam eruat, conquirat, de denunciatoribus ſat ſuperq; aliiſq;, quas inſtituti ratio deſiderabat, inde dependentibus cautis & mediis ad quæſtionem inferendam ſubordinatis, tranſegimus jam de inſtigatore proprie ſic dicto juxta ſubjectam materiam, nec non accuſatore pro re nata dicemus.

Sciendum itaque, ut vocis etymon ante omnia declaremus, inſtigatorem eſſe illum, qui nec partibus denunciatoris nec accuſatoris fungitur, ſcilicet, qui quærelam † defert judici, eumque commovet ad inquirendum, 1
jus dicentis animum argumentis probabilibus ita informans, ut is ſuperſedere nequeat, quin ſatisfaciat & deſiderio quærelantis & juſtitiæ ſanguinem injuſti, de manu judicis tandem requirentis. quapropter, *Thom de Aquin. 2. quæſt. 67.* duplici ratione † judicem hic conſtringi dicit, (1) ex parte accu- 2
ſatoris (vel inſtigatoris) cujus forſan intereſt maleficia puniri, (2.) ex parte Reipublicæ cujus non minus intereſt delicta non manere impunita, *l. 51. ff. ad L. Aquil. adde l. 1. C. de privat. carcerib. ubi Bald. ait* judicem † flocci penden- 3
tem quærelas ejuſmodi ſibi delatas coërcendum in ſyndicatu, vel læſæ majeſtatis pœna in atrocioribus criminibus, & hoc maxime *ait Tiraquell.* Si obtentu pecuniæ, vel alterius commodi temporalis idipſum judex fecerit, vel omiſerit potius *in præfat. de mitig. pœn. num.* 10. quo caſu inſtigator † Fi- 4
ſcalem compellare, vel ſiquidem is ſeſe interponere noluerit, ordinarium vel ſuperiorem interpellare jure poterit, nempe ut fiat juſtitia ne pereat mundus. Et ſanè ecquis non videt etiam uſum officii hujus, quod ex quærela vel inſtigatione deſcendit, diſtinctum † ab ipſa denunciatione, & accuſatione, 5
qui enim pudore victi denunciare nolint, quod officium antiquitati turpe & infame videbatur, *vide part. 1. cap. 4.* vel ſeſe ingerere Fiſcalis muneri, quod ſuſpicione non vacat, cum culpa ſit immiſcere ſe rei ad ſe non ſpectanti, *l. culpa, 36. ff. de R. J.*

Aut qui † non intereſſe magnum, quo plerique accuſatores invitan- 6
tur vel etiam coguntur ad accuſandum prætendere & allegare poſſunt, vel ſi quid intereſſe docere valeant, ſubverentur graviora † SCti Turpilliani in- 7
commoda, onera & pœnas ad ſubeundum hoc inſtigatoris munus admittantur, non tam ſana juris ratio, quam ipſa rei neceſſitas expoſtulat, hinc inſcriptio, incarceratio & ſatiſdatio accuſatorum admodum dura & moleſta, quod jugum ſanæ mentis compos non facilè ſibi accerſit, *vide Conſtit. Crim. Car. V. art.* 12. ibi: So bald an Ancklager zu Gefengnuß angenommen iſt / ſoll der Anklåger / oder ſein Gewalthaber / mit ſeinem Leib verwaret werden / biß er mit Bürgen / Cauttion / Beſtandt und Sicherung / die der Richter mit ſampt vier

Schöpf-

[illegible] nach gelegenheit der Sachen vnnd [illegible] [illegible] [illegible] *[illegible]* [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] ille. Extat hac de re constitutio [illegible] Gallorum [illegible] [illegible] [illegible] *[illegible]* [illegible] [illegible] [illegible] [illegible] [illegible] & [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]. Quā in [illegible] [illegible] [illegible] [illegible] [illegible] & [illegible] [illegible] [illegible], *[illegible]* [illegible] [illegible] emphatica verba [illegible] [illegible]. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] *[illegible]* *cap. 6.*

Neq; hic mavet, quod [illegible] [illegible] obnoxius [illegible] [illegible] & [illegible] [illegible] [illegible] [illegible] [illegible] *Angel. [illegible]*

8 *[illegible] Tit. [illegible]* Hinc [illegible] [illegible] [illegible] *[illegible]* [illegible] [illegible] *[illegible]* [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] *[illegible]* *[illegible] num. 2.* [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] *[illegible]* [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

cum [illegible]

3 [illegible]

[illegible] probatur per teſtes [illegible]

iure civili in cauſa contumaciæ, extra bona [illegible]

procedat in cauſa principali uſq; ad de[illegible]

6 [illegible] declarari ex [illegible]

[illegible] *de* [illegible] *cap.* [illegible] *nu.* 14. [illegible]

cum [illegible]

[illegible]

[illegible]

[illegible]

7 [illegible]

[illegible]

8 [illegible]

[illegible]

9 [illegible]

10 [illegible]

[illegible]

[illegible] ad tribunal judicis, [illegible] 12 [illegible] quod [illegible] fatalibus introducendæ appellationis [illegible] appellatorem, [illegible] *C. de appellat.* ad quem appellatur, [illegible] negligentia [illegible] tempus, [illegible] apoſtolos [illegible] perpetuo [illegible] *num.* [illegible], appellet [illegible] juris beneficia [illegible]

4\. [illegible] 13 [illegible] injuria & [illegible] appellare non valuit, [illegible] *C. de app.* [illegible] cetera præſcriptio, [illegible] *de annal. præſcript.* [illegible] inſtrumenti appellatorii, [illegible] appellationis [illegible] judici, [illegible] inſtrumentum, [illegible]

5\. [illegible] 14 [illegible] *Mench.* [illegible] judici [illegible] *num.* [illegible] *num.* 7. [illegible] bent in continenti [illegible] ritis, teſtibus vel juramento, [illegible] *pag.* 131 [illegible] *Gaill. lo. nu.* 14. [illegible] recuſationis, cauſa [illegible]

[illegible]

docidi, quam dubitare, quæ ſententia Ludovici Pontani [illegible] poſt [illegible] *Ruiz. d. loc quam tamen* [illegible] *judicibus* [illegible] *bus non lingua modo ſed manu & auribus etiam* [illegible] *numerare* [illegible] *& c. hac* [illegible]

27 [illegible] Ut contumaciam purget [illegible] ægritudo corporis, de qua [illegible] mentis imbecillitas, animi [illegible], quam dementiam & furorem [illegible] mus, excuſationem meretur, *l.* [illegible] *ſi quis judicis* [illegible] *naſſe & prolixe Ruiz. d. deciſ. 4. num.* [illegible] Fatuos & ſtultos [illegible] vit *Bald. in l.* [illegible] *C. l. 4. C.* [illegible] *& alter* [illegible] numerat [illegible] vel [illegible] juris imperitiam, ut [illegible] loco degunt ubi non poſſunt conſulere periciores, [illegible] etenim ſine dolo & affectu [illegible] præcepta judicum [illegible] contumaciam, *argum. l.* [illegible] *de re jud.* [illegible] *Everhard. in* [illegible]

28 lo [illegible] quod licet etiam vel ignorantia juris [illegible] & ruſticam, quando non potuerunt conſulere periciores [illegible] omnibus [illegible] indocta pro forma [illegible] & quæ [illegible] judiciorum [illegible] ob publicam utilitatem, [illegible] *& alibi* [illegible], quod hoc caſu ob [illegible] vel mulier debeant reſtitui in integrum. Quando [illegible] *hard. d.* [illegible] mulieres vel ruſtici potuerunt conſulere periciores, & non conſuluerant, certum eſt, quod non excuſantur etiam [illegible] & [illegible] quæ [illegible] pro [illegible] ratem pro indulgentia [illegible] quoque [illegible] peritos [illegible] conſilio. [illegible] *Ioan. Baptiſt.* [illegible] *de præſcript.* [illegible] vel ordinationis [illegible] conſideratur, [illegible] promulgata fuit [illegible] in aliquo [illegible] loco publicata [illegible] ad [illegible] tiam [illegible] traducendas [illegible] bus non [illegible] contrarium [illegible]

29 [illegible]

30 Denique [illegible] quando [illegible] [illegible]

[illegible] § 1 *ff. de* [illegible]
[illegible] iplæ cauſæ bannum ex [illegible]
[illegible], ut [illegible]
[illegible] In cauſa [illegible] & capturam [illegible]
[illegible] ratio [illegible] que dolo, quem contumaciæ † [illegible]
[illegible] amen à dolo excuſet [illegible]
[illegible] adminiſtrare [illegible]
[illegible] *de iudic. pag.* [illegible]
ad [illegible] † in [illegible] hæret purgandum,
æqui [illegible] § [illegible] *ff. de* [illegible]
non [illegible], qui [illegible]
[illegible] verba [illegible]
[illegible] *Gail.* [illegible] *obſerv.* [illegible]
[illegible] publicè, ſed [illegible]
[illegible] contumaciæ [illegible] †
[illegible] *ff. de his, qui not. infam.* [illegible]
[illegible] reus non [illegible]
[illegible] debeat admitti [illegible] *Gail.* [illegible]
[illegible]
[illegible] decernere [illegible] quod
[illegible] exceptum [illegible] *Gail.* [illegible] *de pp* [illegible]
num. [illegible] delicta excepta [illegible] purgationem ad-
mittere [illegible], ex ſola enim [illegible] hæc adeò
[illegible] & deteſtanda [illegible] judex omiſſis
[illegible] ordine judiciario procedere [illegible]
ad [illegible], & jam ad [illegible]
[illegible] queat deſcendere. Quoad delicta non excepta dicendum [illegible] hoc
[illegible] urgentia, quæ
[illegible] probari poſſe videbuntur [illegible]
[illegible] neque enim juſta
[illegible] ſpſum [illegible]
[illegible] *num.* 17. Lites
[illegible] † intereſt ut quæ
[illegible] *l.* [illegible]
an L. Aquil.

Sed quid [illegible]
nec non [illegible] conſuetudinem [illegible]
[illegible] contumaciam [illegible]

ſpondeo: Quid [illegible] conductus ex officio [illegible] [illegible] [illegible] [illegible]
92 quoniam fuga † omnis indicio patit, *Farinac.* [illegible] [illegible] [illegible]
adhuc comparere noluit, in contumaciam adverſus eum [illegible] [illegible]
exiſtimo, ad innocentiam vero [illegible] demonſtrandam [illegible] [illegible]
dum defenſorem, cum contumacia non [illegible] probationem [illegible] [illegible]
Hippol. de Marſil. in § poſtquam num. [illegible] *Gail.* [illegible] *de pp. cap.* [illegible] [illegible]
autem admittit probationes in contrarium *l.* [illegible] *qui C qua* [illegible] [illegible]
93 [illegible] *de* [illegible] *& exhib. reor.* & demonſtratio innocentiæ admittitur † [illegible]
iam poſt ſententiam declaratoriam [illegible], *Spec. de accuſat.* [illegible] [illegible]
94 *Gail. d. loc. num.* 4. hinc ſtatuta † contumacem pro confeſſo habentia [illegible]
quam excludunt innocentiæ exceptionem. *Idem d. loc.* Et regula eſt. Quod
[illegible] [illegible] [illegible] [illegible], [illegible], quam celeberri-
mam [illegible] idem *Gail. obſerv.* [illegible] *num.* [illegible] [illegible]
[illegible] *de* [illegible] *jud.* [illegible] *Zaſ. in l.* [illegible] *n.* [illegible] *de* [illegible].

CAPUT XVII.

DE HIS QVI INTERPELLANT ET INSTIGANT MAGISTRATUM AD IMPUNIENDUM.

SUMMARIA.

1. *Inſtigator quis dicatur?*
2. *Cur judex* [illegible] *mittere teneatur, in* [illegible]
3. *Iudex* [illegible] *querelas* [illegible]
4. *Quando fiscalis implorandus, et ab inſtigatore?*
5. *Qua nota diſtinguatur* [illegible]
6. [illegible]
7. [illegible]
8. [illegible]
9. [illegible]
10. [illegible]
11. [illegible]
12. [illegible]
13. [illegible]
14. [illegible]
15. [illegible]
16. [illegible]
17. [illegible]
18. [illegible]
19. [illegible]
20. [illegible]
21. [illegible]
22. [illegible]
23. [illegible]

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DIximus ſupra de triplici delatorum genere in cauſis criminalibus, aut enim [illegible] ſunt, qui ſtrictè ita dicti & delatores nuncupantur, aut inſtigatores vel [illegible], qui adducunt judicem, ut inquirat & [illegible] competentia [illegible] veritatem cauſæ, reique nocentiam eruat, cum[illegible] de [illegible], quas [illegible] ratio deſiderabat, in ſe dependentibus [illegible] ad quæſtionem inferendam ſubordinata, [illegible] egimus, [illegible] proprie ſic dicto juxta ſubjectam materiam, [illegible] dicemus.

Sciendum itaque, [illegible] ante omnia declaremus, inſtigatorem eſſe illum, qui [illegible] nec accuſatoris fungitur, ſcilicet, qui querelam [illegible] eumque commovet ad inquirendum, 1 jus [illegible] ſuperſedere nequit, [illegible] quærelantis & [illegible] injuſti, [illegible] tandem requirentis [illegible] *Thom.* [illegible] [illegible] † judicem hic [illegible] dicis, (1) ex parte [illegible] 2 [illegible] vel inſtigatoris [illegible] ex parte Reipublicæ [illegible] non minus intereſt [illegible] *l. ut ſ. ad l. Aquil.* [illegible] *l. 1. C. de privat. carcerib. ubi Bald.* [illegible] † [illegible] coercendum in [illegible], & hac [illegible] *ait Tiraquell.* Si [illegible], vel [illegible] temporalis [illegible] judex fecerit, vel omiſerit, [illegible] *in præfat. de mitig. pæn.* [illegible] quo [illegible] † [illegible] 4 [illegible] ordinarium vel ſuperiorem [illegible] poterit, nempe ut fiat juſtitia ne pereat mundus. Et [illegible] hujus, [illegible] quærela vel [illegible] † ab ipſa denunciatione [illegible] 5 [illegible], quod officium [illegible] & infame videbitur, [illegible] cap. 4. vel [illegible] cum culpa [illegible] ad ſe non ſpectantis [illegible] *[illegible] 7. & 8.*

[illegible] plerique [illegible] ut [illegible] prætendere & [illegible] † SCti Turpilliani [illegible] 6 [illegible] hinc [illegible] & [illegible] *ar.* 12 [illegible] [illegible] oder kein [illegible] [illegible]

[illegible] ... Fatetur hoc de re conſtitutio [illegible] Gallorum Theodori[illegible] ... [illegible] ... & ſufficienter probanda, [illegible] ... quam ... [illegible] ... operæ pretium [illegible] ... [illegible]

[illegible] ... Es ſtandt [illegible] ... eine gute [illegible] ... auff daß [illegible] ... Verdammuß [illegible] ... cap. [illegible].

Neq; [illegible] movet, quod [illegible] ... [illegible]

[illegible]

[illegible]

CAPUT XVI.

DE PVRGATIONE [illegible]

Summaria.

[illegible]

[illegible]

27. [illegible] animi [illegible]

[illegible] ignorantia [illegible]

[illegible] contumaciam [illegible]

[illegible] contumaciam [illegible]

[illegible]

NE [illegible]

[illegible]

[illegible] ad tribunal judicis, [illegible]
§. *Pisanus* [illegible] vel luminis & inundationem aquarum, [illegible]
[illegible] *in l.* [illegible]
nare, quod [illegible] fatalibus introducenda appel-
latione, elapsis ad [illegible] in integrum appellatorem, *Bald.* [illegible]
[illegible] ad quem appellatis, si
[illegible] negligentia [illegible] temporis, [illegible] ad reddendos apostolos præfi-
[illegible], [illegible] casus necessitate [illegible]
[illegible], quæ [illegible] juxta perpetuam [illegible]
formam [illegible] *num.* [illegible] ubi e-
stimat, judicem [illegible], appellationem [illegible]
casu [illegible] quæ juris beneficio
vel remedio tam in causa criminali, quam civili [illegible]
[illegible] concedantur. [illegible]

4. [illegible] appellationis, [illegible]
gatis [illegible] & [illegible]
[illegible] bullam [illegible]
[illegible] expedire [illegible] valeat, *Menoch.*
de arbitrar. [illegible] *Cod. de appell.* [illegible]
[illegible] parti, [illegible] im-
putari [illegible] regula, quod non valenti [illegible]
[illegible] *præscript.*
præscript. [illegible] non [illegible] ob defectum
instrumenti appellationis, quod intra fatalia introducendæ appellationis pro-
[illegible] non potuit, [illegible] judici,
vel [illegible] instrumenti [illegible]
[illegible] vel [illegible] instrumentum, vide [illegible] *Menoch. de arbitr. jud. cas.* [illegible]

5. Contumaciam purgat [illegible] [illegible]
[illegible], carceris vel impedimento [illegible] *Bartol.*
[illegible] *Menoch.* [illegible]
[illegible] [illegible]
[illegible] *Vulteius* [illegible] in-
[illegible] vel potius
[illegible] *Menoch.* [illegible]
num. [illegible] *Gail.* [illegible] probari de-
bent in [illegible] opinionem [illegible]
[illegible], testibus vel juramento, [illegible] *Gail.* [illegible]
[illegible] *Gail.* [illegible] *nu.* [illegible]
[illegible] causam [illegible]

cale-

15 calumnia † juraverit recuſatur, judici debet [illegible] ſuggeſtione tradere [illegible] judicē [illegible] & partem adverſam [illegible], quod [illegible] debet, cum malicijs hominum ſit reſiſtendum, *l. in fundo*, [illegible] in cauſa cri-
16 minali cumprimis ponderanda eſt recuſatio, quam plures † non admittendam contendunt, ne anſa præbeatur reis quocunque prætextu [illegible] criminales & [illegible] eligere, neſcire quo [illegible] colphi exemplo, quod inducit *S. burg. [illegible]* [illegible] judice [illegible], ut [illegible] delegationem, quæ enim [illegible] ordinarium, contra delegatum opponi non [illegible]
17 † perſonæ [illegible] *[illegible] d. decis. pag. 118.* [illegible]
18 † [illegible] quod ſic cum [illegible] proceſſus recuſatio [illegible] *l. [illegible] de judic.* [illegible] cur judex [illegible] non [illegible] [illegible] temporis [illegible] nulla [illegible] [illegible].

19 6. Contumacia purgatur exceptione † non [illegible] & [illegible] *Maranta in Spec. aur. part. 6. pag. [illegible] 235.* [illegible] opponuntur [illegible] contra [illegible] quæ ad contumaciam purgandam præſtant, *Marant. d. [illegible]* [illegible] *Gail 1. obſerv. 48. 49. 50. 51. 52.* [illegible] ibi poteſt etiam addere omnes [illegible] [illegible] in quibus [illegible] non [illegible] *Maranta d. loc.*

20 7. Contumacia purgatur [illegible], [illegible] [illegible] vel [illegible] & non [illegible] contuma-ciam, *l. [illegible]* [illegible] *quem & quando judex* [illegible]
21 [illegible]

[illegible]

8. [illegible]

[illegible]

[illegible] contumacia, [illegible] de non [illegible] magi-
ſtratu, [illegible] non [illegible]
Petr. Rot. [illegible] admonet judices † ne nimium [illegible] 23
[illegible] *d. loc. num.* 4. mul[illegible]
[illegible] venia digna [illegible] domeſtici doloris memoria,
quo [illegible] qui in [illegible] adverſus leges [illegible] qui ni-
hil aliud admiſerat, [illegible] cum ejus cauſa ex albo
[illegible] reſtitueretur,
beneficio videlicet [illegible] defenſi [illegible] ſum
conſecutus [illegible] *Parſ. conſil.* 102.
[illegible] ubi [illegible] gra
ves vel majores [illegible] *l.* 2.
[illegible]
[illegible] † [illegible] 24
[illegible]
[illegible]
[illegible] *num.* 18 [illegible] major [illegible]
[illegible]
[illegible] *ut [illegible] qui [illegible]*
[illegible]

9. A contumacia excuſat paupertas, † quæ [illegible] 25
[illegible] *Eberhard. à Weihe in* [illegible] *pag.* 122.
vide Marant. [illegible] *num.* 5. [illegible]
4. *&* 52. [illegible]
dei religio & [illegible]
[illegible]
[illegible] *Marant.* [illegible]
[illegible] quoniam [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] *Chri-
ſtoph.* [illegible] 26
[illegible]
[illegible] *Joachim.* [illegible]
num. 237 [illegible]
lib. 10. *Rom.* *in l.* [illegible]
[illegible] ibus una vice & momento [illegible]

 [illegible]

decoti, [illegible] a Ludovico [illegible] *Rot. [illegible] quam tamen [illegible] haud facili [illegible] judicibus [illegible] bus [illegible] ſed manus & [illegible] numerare p[illegible] &c. [illegible] n. 9 [illegible].*

17 [illegible] contumaciam purgat [illegible] corporis, de qua [illegible] mentis imbecillitas, animi [illegible] dementiam & [illegible] mus, [illegible] *l. 2 [illegible] § [illegible] prolixe Rot. d. deciſ. 4. num. 31* [illegible] fatuus & [illegible] vit. *Bald. in l. humanitatis C. de imp. [illegible]* [illegible] numerare [illegible] juris imperitiam, [illegible] locis [illegible] non poſſunt [illegible] *Menoch.* [illegible] cum ſine dolo & [illegible] quia [illegible] contumaciam. *argum. l. [illegible] Eberhard. [illegible]*

18 [illegible] lo te non ignorare, quod [illegible] vel ignorantia juris [illegible] & ruſticum, [illegible] omnibus [illegible] & [illegible] judiciorum [illegible] publica [illegible] *C. [illegible]* [illegible] quod hoc caſu [illegible] mulieres debeant [illegible] integrum. [illegible] *Eberhard. d. [illegible]* mulieres vel ruſtici [illegible] conſilio [illegible] & [illegible] ſoluerunt, [illegible] quod [illegible] & [illegible] ad ſylvam [illegible] [illegible] pro [illegible] quoque [illegible] *Bald. [illegible] gloſſ. [illegible]* [illegible] vel ordinarium provincialis [illegible] conſideratur, ſiquidem [illegible] promulgata ſunt [illegible] loco publico [illegible] [illegible] probabilem, [illegible]

19 [illegible]

20 [illegible]

dicere [illegible] & [illegible], [illegible] contemn[illegible] [illegible] [illegible] *d[illegible]* [illegible]
d. loc. nu. 4. pag. [illegible] [illegible] ſpecies, quæ [illegible]
[illegible], nec dubium [illegible] [illegible] cauſæ banniti ex contum[illegible] [illegible]
pendens evacuare & [illegible], ut [illegible] ſuſpendere [illegible]
beret. In cauſa criminali & [illegible] averta[illegible] contum[illegible] purga-
[illegible] ratio [illegible], ne abſque dolo, quem contumacia [illegible] requirit [illegible]
[illegible], condemnetur [illegible] à dolo excuſet [illegible],
calliditatem & culpam [illegible], neq; enim dum [illegible]
[illegible] *[illegible] de [illegible] pag.* [illegible]
ad calliditatem [illegible] hære[illegible], [illegible]
æquè purgationis juramentum [illegible] *l. [illegible] ff. de [illegible], qui [illegible]*,
non [illegible], qui præcedunt animum inculpatum,
[illegible], quod verba, quæ [illegible] non [illegible]-
[illegible] *[illegible] cap.* [illegible] ubi docet hoc juramen-
[illegible] privatim deferendum. [illegible] hæc [illegible]
[illegible] ratio purgandæ contumaciæ [illegible] [illegible]
[illegible], *d. l. [illegible] ff. de his, qui not. infam.* [illegible] regula:
Quod [illegible] reus non [illegible] ſuſpicionibus [illegible]
[illegible] purgationis [illegible] debeat admittere, *[illegible]*, num. [illegible]
[illegible], quam innocentem condemnare [illegible]
[illegible], quod
[illegible] *de [illegible] cap.* [illegible]
num. [illegible] delicta excepta, ubi purgationem ad-
mittere [illegible] ex [illegible] hæc adeò
[illegible] quæ [illegible]
[illegible], quo
ad [illegible], & [illegible] ad [illegible] ri-
goroſius [illegible] dicendum [illegible]
[illegible], qui [illegible]
[illegible] cri-
minali [illegible] & [illegible] jam
[illegible] prode-
rit [illegible] *[illegible] num. 17.* [illegible]
criminalis [illegible] ut quis [illegible]
par[illegible], *l. [illegible] ff.*
ad L. [illegible]

Sed quid ſi [illegible] [illegible] & carcere [illegible],
nec non [illegible], [illegible] ad [illegible]-
[illegible] & purgationem [illegible] debet? [illegible]

ſpondeo: Quod [illegible] contumaciam [illegible] neque enim fuga † omnis indicia parit, *Farinac.* [illegible] adhuc comparere nolit, in contumaciam adverſus eum procedendum exiſtimo, ad innocentiam vero ejus demonſtrandam [illegible] dum defenſorem, cum contumacia non [illegible] probationem [illegible] *Hyppol. de Marſil. in §. poſtquam, num. 51 Gail. 2. de pp. cap. 8.* [illegible] † autem admitti probationes in contrarium *l. ſi is, qui C. quo* [illegible] *de cuſtod. & exhib. reor.* & demonſtratio innocentiæ admittatur † etiam poſt ſententiam declaratoriam banni, *Spec. de accuſat.* [illegible] *Gail. d. loc. num. 4.* hinc ſtatuta † contumacem pro confeſſo habentia nunquam excludunt innocentiæ exceptionem. *Idem d. loc.* Et regula eſt: Quod [illegible] non probare reus cauſa cadere non debeat, gloſſa, quam celeberrimam [illegible] *Gail.* [illegible] *num. 3.* [illegible] *temp.* [illegible] *Menoch. 2. de arb. jud. caſ. 28.* [illegible] *Zaſ. in l.* [illegible]

CAPUT XVII.

DE HIS, QVI INTERPELLANT ET INSTIGANT magiſtratum ad inquirendum.

SUMMARIA.

1. *Inſtigator quis dicatur?*
2. *Cur judex ſe intromittere teneatur inſtigatore* [illegible]*?*
3. *Iudex* [illegible] *pendente querela inſtigatoris* [illegible] *inſtigatum* [illegible]*.*
4. *Quando ſi alis implorandus ſit ab inſtigatore?*
5. *Qua nota diſtinguatur inſtigator ab accuſatore* [illegible] *denunciatore.*
6. *Minus longe agitur cum inſtigatore* [illegible]*.*
7. *Inſtigator non* [illegible]
8. *Argumenta aliqua* [illegible] *inſtigatione* [illegible]
9. [illegible] *fides habenda* [illegible]*?*
10. [illegible]
11. [illegible]
12. [illegible]
13. [illegible]
14. [illegible]
15. [illegible]
16. [illegible]
17. [illegible]
18. [illegible]
19. [illegible]
20. [illegible]
21. [illegible]
22. [illegible]
23. [illegible]

DIXIMUS ſupra de triplici delatorum genere in cauſis criminalibus, aut enim denunciatores ſunt, qui ſtrictè ita dicti, & delatores nuncupantur, aut inſtigatores vel accuſatores, qui adducunt judicem, ut inquirat & judicis competentia [illegible] cauſæ, reique nocentiam eruat, conquiſi, de denunciatoribus ſatis ſuperque [illegible], quas inſtituti ratio deſiderabat, inde dependentibus cauſis & modis ad quæſtionem inferendam ſubordinatis, tractavimus, jam de inſtigatore propriè ſic dicto juxta ſubjectam materiam, nec non [illegible] dicemus.

Sciendum itaque, ut [illegible] declaremus, inſtigatorem eſſe illum, qui nec partibus denunciatoris nec accuſatoris fungitur, ſcilicet, qui querelam † defert judici, eumque cum movet ad inquirendum, 1 ju[illegible] dicentis [illegible] argumentis probabilibus [illegible] informans, ut ſi ſuperſedere nequeat, quin [illegible] & deſiderio quærelantis & juſtitiæ [illegible] ſuo manu judicis tandem [illegible] quæ nisi per, *Thom. de* [illegible] [illegible] duplici ratione † juxta [illegible] ex parte accuſatoris vel inſtigatoris cujus forſan intereſt maleficia puniri, [illegible] ex parte [illegible] minus intereſt delicta non manere impunita *L. ita vul. addit 1. C. de privat. carcerib. ubi Bald. et* [illegible] † [illegible] pendens 3 [illegible] querelas [illegible] in [illegible] majeſtatis [illegible] criminibus, & hoc maxime *ait Tiraquell.* Si obtentu [illegible] temporalis [illegible] judex [illegible], vel omiſerit potius *in præfat. de mitig. pæn. [illegible]* [illegible] † Fiſcalem [illegible] interponere nolentem ordinarium vel ſuperiorem [illegible] potuerit, nempe ut [illegible] mundos. Etiam [illegible] etiam uſum officii hujus, [illegible] ex querela vel inſtigatione deſcendit, diſtinctum † ab ipſa denunciatione & accuſatione, 4 qui enim pudore [illegible] quod officium [illegible] turpe & infame videbatur, *vide part. 1. cap. 4.* [illegible] Fiſcalis muneri, quod ſuſpicionem non [illegible] culpa ſit [illegible] ad ſe [illegible], [illegible] *part. [illegible]*

Atqui † [illegible] accuſatores [illegible] 5 vel [illegible] ad [illegible] vendatur & [illegible] vel ſi quod [illegible] graviora † [illegible] 6 columnis, [illegible] inſtigatoris manus [illegible], non [illegible] neceſſitas expoſtulat, hoc inſcriptio, [illegible] & [illegible] ſanguinem [illegible] mentis [illegible], *vide* [illegible] *art. 12.* [illegible] [illegible] [illegible] [illegible] [illegible]

Saſſ-

[illegible] nach [illegible] der Sachen [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] liberare [illegible] [illegible] [illegible] [illegible] volunt [illegible] non probata [illegible] [illegible] Extat hac de re constitutio Regis Gallorum Theodorici [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] probanda, [illegible] certo [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Saxon. [illegible] [illegible] [illegible] dem Kläger [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] nicht [illegible] [illegible] *cap.* 8.

Nec [illegible] movet, quod [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non aliter [illegible] ipse [illegible] *in pr.* [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ad accusationem, praestare teneatur, [illegible] [illegible] [illegible] quanquam enim [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] nec non de calumnia [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] *num.* [illegible]

[illegible]

CAPUT XVIII.

[illegible]

Summaria.

[illegible]

Q[illegible]

ſatio. De prioribus [illegible] quatenus ea [illegible]

Accuſatio vel accuſare [illegible] *in paratit.* [illegible] *Clar.* [illegible]

3 teriam † hinc indiciorum [illegible]

[illegible] & partes [illegible]

Sed quia [illegible]

4 Vel quia [illegible]

[illegible] iudex & accuſator [illegible]

[illegible] *Clar.* [illegible] *quæſt.* [illegible]

[illegible] ſublata ſint fere omnes [illegible]

propterea cum [illegible] partis [illegible]

[illegible] non [illegible]

[illegible]

[illegible] iudex [illegible] & [illegible]

[illegible] ut [illegible] & iudex [illegible]

[illegible] & [illegible]

cauſæ veritate [illegible]

——— *[illegible]*

[illegible] Neque obſtat [illegible] propria [illegible]

[illegible] *ff. de* [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Quod [illegible] *iudice* [illegible]

[illegible] vel [illegible]

& cognitione [illegible]

5 [illegible] † [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

6 [illegible] † [illegible]

[illegible]

Ad [illegible] Nihil eſſe [illegible]

[illegible]

[illegible]

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[illegible]tatione[illegible], dicit enim: Quod ſi [illegible] pauper [illegible] [illegible]anaum ſit admittendus, quo ipſo [illegible] [illegible]
53 dit[illegible], quoniam pauper † faciliſme poteſt [illegible] querela, [illegible] quoties accuſator pauper [illegible] verit, quam rationem animadvertit, *Aretin. in addit.* [illegible] [illegible] priorem [illegible] rationem & ſententiam, [illegible] [illegible] omnino admittatur ad accuſandum, [illegible] quemq[illegible] ad teſtimonia ferenda admittendum [illegible] *[illegible] gl. in l. teſtium, ff. de teſtib.* [illegible] *[illegible] pauper.* quibus aſſentior, [illegible] [illegible] 2 9 nam in illis, quæ ad [illegible] animi, quam opes externæ valere [illegible] integritas denique [illegible] ſtimonia tollit omnem ſuſpicionem [illegible] Aretini ſententiam [illegible] fides [illegible] examinanda eſt [illegible] ploranda erunt in primis [illegible] & [illegible] honeſtæ, [illegible] vitæ [illegible] [illegible] [illegible] admittat [illegible] [illegible] teſtimonium dat, [illegible] [illegible] [illegible] [illegible] admittendus [illegible] *d.l.* [illegible]
54 ſtatis. *L. 32.* [illegible] [illegible]

[illegible]

CAPUT XIX.

DE SATISD[illegible] IN CAVSIS [illegible]um.

S [illegible] A.

[illegible]

CÆterùm procedendi modus [illegible], vt [illegible] (1.) fama ingen-tium [illegible] (2.) [illegible] (3.) [illegible] (4.) [illegible] ne adverſus reum [illegible] eſt aperta, [illegible] [illegible] vel accuſatorem [illegible], [illegible] poteſt, quoniam [illegible] [illegible] inquiſitionem [illegible]. *Clar.* [illegible] vel accuſator [illegible] terminum eundem [illegible], ille [illegible] referre [illegible] vel protocollis [illegible] Secretarius [illegible], quæ fama [illegible] multitudinis teſtimonium, [illegible] indigatoris vel accuſatoris, nec non indicia [illegible] adverſus eundem [illegible] & [illegible]

de examine [illegible] maximeque [illegible], & [illegible] dum inferenda. hæc præmiſſa [illegible] nunciatorem [illegible] vel accuſatum [illegible] torum exhibentur. [illegible] conteſtatio, [illegible] de calumnia, &c. [illegible] hæc [illegible] ſolutiones & quæ alia [illegible] inde ſunt. Quem [illegible] indicium [illegible] generali inquiſitione [illegible] tocolli, vel [illegible] ante ſpecialem inquiſitionem [illegible] [illegible] Quantum [illegible] Indicium [illegible] ter in inquiſitionis proceſſu ſpeciali [illegible] nullum dubium eſt, [illegible] [illegible] quæ de re [illegible] præſcriptum.

In [illegible] diſtinguo inter indicia urgentia & [illegible] dicta urgentiora [illegible] clancularis & calumnioſis [illegible] innocens [illegible] ſemper [illegible] quod
4 indicia urgentia [illegible] ſæpenumero [illegible] ritis [illegible] [illegible] & promo [illegible] quod [illegible] dita [illegible] reus, deinde [illegible] [illegible] generalem, [illegible] ſpeciale [illegible] [illegible]
5 pen[illegible] [illegible] & inquiſitio [illegible] [illegible] [illegible] [illegible] Proinde [illegible]
6 [illegible] Quod in [illegible] officio hanc [illegible] etiam in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Ergo [illegible] [illegible]

[illegible]

[illegible] etenim defenſio † dici poteſt, [illegible] 7
[illegible] in perino adverſarii, quoniam [illegible]
[illegible] *in clem.* [illegible]
rer de ſum. [illegible] orum, † [illegible] 8
Bald. [illegible] judi[illegible]
[illegible] *Eberhard in top. a Correlat.* [illegible]
Adde quod [illegible] inquiſitione, ut [illegible] p[illegible]
cetur, *vide ſupra cap.* [illegible] eadem ſit juris diſpoſitio, quæ
[illegible] † [illegible] ſeparari non debet. *Idem* 9
Eberhard [illegible] *de inquiſit.* [illegible]
cap. for. [illegible] Quod [illegible] juſtitiæ ignari Deum & juſtitiam con-
temnentes hoc non ſervent, &c. [illegible] quod attinet, e[illegible]
[illegible] quæ pro judicis [illegible]
do [illegible] ſunt vel aliunde [illegible] ſunt, ita [illegible]
non [illegible] operæ pretium, duco, &c.

Jam de [illegible] expeditum eſt, poſt libelli oblationem vel
[illegible] debere † actorem vel [illegible] 10
tibus. [illegible] *in princ.* [illegible] *proceſſ.* [illegible] *part.* [illegible]
[illegible] *Conſt. Crim.* ante [illegible]
[illegible] capitalibus delictis. *Conſt. Crim.* [illegible]
[illegible] mihi placuit, ex [illegible]
[illegible] Goblero. [illegible]
[illegible]
diantur, donec fidejuſſores caverint & [illegible]
† [illegible] & conditionem 11
[illegible] & [illegible]
[illegible]
tur, & [illegible] plena [illegible]
ture ac debito tempore [illegible]
[illegible] & [illegible]
[illegible] &
[illegible] in modum [illegible]
[illegible] &
[illegible], licere [illegible]
[illegible]
[illegible] & [illegible]
[illegible]
[illegible] &
[illegible]
non [illegible] & [illegible] per hunc [illegible]

 Pœnæ

Porro [illegible] dandi modos [illegible] ab Imperatore in eadem conſtitutione, quæ illum eventum reſpicit, quando reus [illegible] delictum [illegible] delicti excuſationem allegat. Hæc autem ita ſeſe habet, quam [illegible] cuim voluit, pro re nata, ait conſtitutio, quod quando reus factum [illegible] aut diffitetur, ſed legitimam excuſationem facti, quæ probata ipſum [illegible] relevare poſſit, allegat: contra verò [illegible] allegatas rationes [illegible] refutandas [illegible], hoc in caſu [illegible] nihilominus [illegible] reſpectu perſonæ & cauſæ judicis [illegible] æſtimatione præſentibus [illegible] ut neceſſarium fuerit [illegible] ac fidejubeat, [illegible] ita explicaverit, ut nulla [illegible] inali [illegible] vincturæ injuriæ & intereſſe judicialiter [illegible] juxta decretum [illegible] ſe [illegible] eſſe, [illegible] autem [illegible] facta, quemadmodum [illegible] ò excuſatum [illegible] expediatur, docebit [illegible] primus articulus, [illegible], ſi quis crimen [illegible]. Et ut [illegible] quam illa explicatio & certa [illegible] ad [illegible]

14 rem nunquam procederet. Sed quid ſi [illegible] vel [illegible] fidejuſſores dare [illegible] ſimiliter [illegible] ita ut ac[illegible] juſtam conditionem & qualitatem [illegible] perſonæ capture [illegible] donec [illegible] datione fuerit determinata & expedita. Cui quidem [illegible] qui [illegible] ſuſcipit, non [illegible] teſtimonium vult [illegible]. Quod [illegible] homines [illegible] [illegible] nequam re[illegible] vinctos ſiſtere [illegible] eadem quoque [illegible] tisdedem modo [illegible].

[illegible] Dei [illegible] [illegible]

15 [illegible]

17 [illegible] Marcus [illegible] Magnus [illegible] populo Romano [illegible]

[illegible] quod Athenienſes † conſtituto [illegible] 6
lege [illegible] vel mendacium in foro diceret, [illegible] homines mentirentur, *Zwinger.* [illegible] *volum.* [illegible] Poeta Bubalum pictorem ſcriptis [illegible] ad [illegible] Ingenitam inſertamq; hanc [illegible] humanæ [illegible] modo coercere ac non niſi ex præ[illegible] Sed quæritur, utrum † denuncia- 7
tor vel inſtigator [illegible] teneantur uti accuſator vigore [illegible] dicendum quod ſic [illegible] Quia [illegible] hos (accuſatores) cadit, ubi autem [illegible] infirmitas intellectum eſt [illegible] *Conrad. Cap.* [illegible] Quia conſtitutio [illegible] hominis [illegible] *Dd.* [illegible]

[illegible] 8
[illegible]
& [illegible]
publice [illegible] decla, quæ [illegible] 9
[illegible]
quomodo [illegible] Quod [illegible] Fiſcalis † [illegible] 10
[illegible] proviſionem [illegible] † [illegible] 11
[illegible] probare, quos [illegible]
oculis [illegible] & [illegible]
inquirere [illegible] & oculum † [illegible] 12
tare, C. [illegible] *ad miniſtr. tut.* [illegible]
carnalibus vir emunctæ [illegible] requiritur à Fiſcali [illegible]
ne [illegible] *artic.* 12. [illegible]

[illegible]

[illegible] abivit, &c. [illegible] quod [illegible],
23 ne ſit denunciator [illegible] nec [illegible] &legitimus [illegible]
perſona [illegible], ubi vel [illegible]
nunciator ſilet [illegible], ad inquiſitionem [illegible]
modi [illegible] indicia, & demonſtrationes, unde [illegible]
[illegible] officii [illegible] neq; [illegible]
re & corrı [illegible] carceribus, [illegible]
[illegible]
[illegible]
[illegible] &c [illegible]
[illegible] probationes vel indicia nonnunquã [illegible] calumnia [illegible]
alia, &c. præbere, de quibus [illegible], in quo cum calumnia [illegible]
ſuperq; purgetur, non eſt dicendum, [illegible] in hac
paſſu [illegible] ad cautionem adeo rigoroſam compelleret, ut [illegible]
verſa, quam eadem [illegible], ergo & diverſa [illegible] diſpoſi-
tio, conſequens eſt. *l. fin. C. de calumniat.* [illegible]
24 *de probat.* Et vulgo [illegible]
[illegible] *Conſtitut. [illegible] Carol. V. art.* [illegible] Was [illegible]
[illegible] der [illegible]
ter autem [illegible] admonendum [illegible]
25 JCtus Paulus *in l. legatis,* 2 [illegible] Inquiſition
oder [illegible] malefici [illegible] quamvis [illegible]
[illegible] denunciatione [illegible]
[illegible]
[illegible] generaliter [illegible]
[illegible] inquiſitionem procedere [illegible]
[illegible], & [illegible]
bene conſtitutis judicis provincialis [illegible] & [illegible]
[illegible] Henricus [illegible]
[illegible]
[illegible]
[illegible] aliud [illegible]
[illegible] & [illegible] JCtorum [illegible] vel [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

natia, [illegible] quod in cauſis civilibus [illegible] ſint [illegible] verba [illegible] dilatandæ, *arg l præcipimus, C. de appellat. Schneider. de [illegible] part [illegible] num. 109 & [illegible].17.n 28.32 & 36.* [illegible] generalitatem [illegible] non pauci caſus legibus expreſſi, quandoquidem jus [illegible], ut ſi quid uno in loco generaliter dictum fuerit, [illegible] eorum, quæ excipiuntur à regula, ſubintelligatur, *D* [illegible] verò ab [illegible] generalitate vulgò pater, mater, [illegible] heres, [illegible] ſuſpicionem, quam de morte [illegible] voluntariam accuſationem & [illegible] neceſſitatem [illegible] multum [illegible], *l [illegible]. C. [illegible] accuſat. l. eos qui, C. de appell. l. mater, [illegible] Turpill.* Ad 3. Reſpondeo. Quod à ſeparatis [illegible], *l [illegible] ubi Bart. ff. de calumniat.* judicia criminalia quidem magnam habent affinitatem cum civilibus cauſis, [illegible] ſunt eadem, [illegible] minus in expreſſis [illegible] præſtandum, jus civile [illegible] præſtabit, quæ enim [illegible] oſtendunt [illegible], ne [illegible] illuſtrare nos [illegible], *[illegible] Schneidewin [illegible] de action. [illegible] tit. 9. 1.*

CAPUT XX.

DE SATISDATIONIBUS REORUM.

SUMMARIA.

1. *Satiſdatio [illegible].*
2. *[illegible].*
3. *Reſ[illegible] fugæ.*
4. *Examinatur ſententia [illegible].*
5. *[illegible].*
6. *[illegible] in [illegible] tur, [illegible].*
7. *[illegible] quid [illegible].*
8. *Satius eſt non [illegible] in alieno [illegible].*
9. *Explicatur l. 7. § 1. ff. de juriſdictione.*
10. *[illegible] ſeparatis criminibus.*
11. *Creditores [illegible] bus.*
12. *Explicatur [illegible].*
13. *Quis [illegible] ſatiſdationem, [illegible] reus [illegible].*
14. *[illegible] non admittit ſatiſdationem de [illegible].*
15. *[illegible] ad [illegible] de [illegible].*
16. *[illegible] ad pœnam [illegible].*
17. *[illegible] ſatiſdationis.*
18. *[illegible].*
19. *[illegible].*
20. *[illegible].*

20 *An tenea*[illegible] *iudex* [illegible] *de* [illegible] *fugati?* | *qui* [illegible] *fugerit.*

21 *Non* [illegible] *in tantum,*

DE ſatisdationibus accuſatorum vel [illegible] in cauſis [illegible] huculque quantum ſatis, iam ſequitur, ut de [illegible] reorum
1 nonnihil dicamus, quæ † non minus neceſſari[illegible] & [illegible] quam cautiones accuſatorum, §. 5 & 6 *ubi* [illegible] *Marant. in Spec. aur. p.* [illegible] *de ſatiſdat. pag. mihi* 248. ubi dicit [illegible] iudicio præſtatur ſatiſdatio, ſi & appelle[illegible] [illegible] præſtatur ſolum [illegible] in civilibus [illegible] in criminalibus [illegible]
2 [illegible] inventa principaliter propter ſuſpicionem fugæ ab hoc † [illegible] iudicium, qui alias poſſet fugere & iudicium eludere, [illegible] fugere, hæc ille, *l. 15. §. 1. C.* [illegible] *Id.* [illegible]
3 relevatur reus † [illegible] *hi, qui ſatiſd. cog.* [illegible] in cauſis [illegible] quod adiicere poſſumus quamquam *Maran. d. loc.* [illegible]
4 rationem illam extendere [illegible] quæ [illegible] † [illegible] nimi ſupplicium inferentes, valere & [illegible] & corporis afflictive [illegible] dus ſuerit reus, [illegible]
[illegible]
5 [illegible] † [illegible]
[illegible] & [illegible] non [illegible] ſolis [illegible]
[illegible] tremendi [illegible] iudicio [illegible] quod ſuper
[illegible] unde [illegible] & iudicio [illegible] publice exponantur, ut [illegible]
[illegible] 57. quos ſubiunc adſcribere obiter.

Iudicabit iudices iudex generalis,
Ibi nihil proderit dignitas papalis,
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

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Alia ſpecies eſt [illegible], † quæ de [illegible] ſolvendo eſt concepta, [illegible] li- 6
cet cauſas [illegible] *[illegible] 6 In[illegible]. de ſatiſdat. [illegible]*
ſatiſd. cog. non tamen ambiguum [illegible] in hac materia [illegible]
piatur. Quod ſi caſu pœna [illegible] vel non ſanguinaria inſligenda erit
reo, idque ex actis apparet, [illegible], & [illegible] cauſæ exitus tu-
lerit, facilè demonſtrari [illegible] jus dicens. Siquidem bona † reo-
rum annotaverit, [illegible], ne in præjudicium fiſci vel reus intervertat
bona, vel ſubornet creditores hypothecam [illegible], qua [illegible] fiſcus, præ-
tendentes, quæ & ſimilia [illegible] inconvenientia judex, operæ precium
[illegible], quoties in [illegible] cautionem de judicato ſol-
vendo non tam [illegible], quam ipſius principalis [illegible], tametſi regu-
lariter illa ſatisdatio non [illegible] ab ipſo principali [illegible] bilia,
prin. [illegible] poſſidere immobilia onerosa, & [illegible]
[illegible] opportunitas † magis, quam bona poſſidere [illegible]
[illegible] & [illegible], quæ ſæpe immortalis eſt, [illegible]
ſtere videatur, quæ evinci non poteſt, *l.* [illegible] *de R. J.* & fruſtra illius expe-
ctetur eventus, quo [illegible]
quam [illegible], *l.* 2[illegible] 4. *ff. eod.* neque advertitur. † *l.* [illegible] §. [illegible] *ff. de* [illegible]
[illegible] habent, luat in corpore, & [illegible] lex de [illegible]
[illegible] liberum, cujus famæ & ſanguini parcere [illegible]
[illegible], quæ ſubſicere famæ prodigas [illegible]
eſt, [illegible] malè utitur, [illegible] *qui* [illegible] &
[illegible] vel vita [illegible]
con[illegible], quod [illegible]
[illegible] † in rebus [illegible] 10
[illegible]
[illegible] *ad* [illegible] ubi dicit: Quod [illegible] † præ- 11
[illegible] cabitur, *Boſſ. in tit. de publ. bon.* [illegible] 82.

[illegible] alia ſatisdationis ſpecies in re [illegible] ſeſe offert, † quæ 12
eſt [illegible] & [illegible], [illegible] reus datis fidejuſſoribus ſpondet de ve-
niendo & ſe præſentando in judicio, quoties [illegible] neceſſitas [illegible],
[illegible] carceres, vel ſiquidem jam eſt [illegible]
[illegible] judex † ſatis [illegible] onem [illegible] & le- 13
gitimum [illegible], [illegible] conveniri poſſit; [illegible] enim
levis injuria [illegible] eum, qui ſatis idoneum fidejuſſorem dare paratus
eſt, *l. 5. §. 1. ff. de his, qui ſatiſdar. cog.* [illegible] *Marant. d. loc. de ſatiſdat. num.* 4. [illegible]
judicio lex illa loquitur de priſca & obſoleta in [illegible] ductione & [illegible]
[illegible] etiam in rebus civilibus, & [illegible] reus [illegible] Al-
[illegible] criminis delatum vel accuſatum, datis fidejuſſoribus de [illegible]
[illegible] liberari de cuſtodia, non eſt, quod dubitetur, [illegible]

dict. loc. eò collimat, niſi quod indiſtinctè judex convenire nequeat non ad-
14 mittens ſatiſdationem, quam ut plurimum exigit (1.) delicti atrocitas, [illegible]
l. 3. ff. de cuſtod. & exhib. reor. (2.) confeſſio [illegible] delicti, & (3.) in fla-
granti crimine deprehenſio rei, *Marant. d. loc. n.* 10. remiſſio autem cuſto-
diæ non cuiuis contingere, ſed ex præſcripto Ulpiani in *l. 1. ff. de cuſtod. & ex-*
15 *hib. reor.* meditari & definiri debet, ubi in cautione † à fidejuſſoribus re-
cepta, ſolet conveniri de modo ſiſtendi reum, qui ſi non fuerit ad [illegible] ſer-
vatus, fidejuſſor in pœnam vel mulctam ſtipulatione in [illegible], conſe-
ſtim condemnari debet, qui ſi in excipere adverſus pacta conventa [illegible]
adnititur, id ſummariè eſt diſcutiendum, [illegible]
[illegible] nulla admittitur diſputatio vel exceptio indaginem [illegible]
quirens. Hinc fidejuſſores coguntur renunciare *l.* [illegible]
bus, aliis beneficiis, ne ſub fide data & admiſſa [illegible], cum
eo fiat colluſio & illuſio ſequatur ſacroſanctæ juſtitiæ, quod [illegible]
quacunq; induſtria & conatu judex mature prævidere [illegible]
Quapropter proſpicere tenetur, ne dum fidejuſſor perquiritur [illegible],
quod ei licet, [illegible] intra menſes ſex ſeſe [illegible] vicillim, *Marant. d. loc.* [illegible]
juſſor cum reo delinquente dilabatur. Res eſt ardua & malitiæ plena, [illegible]
[illegible] hominum ubi eundum eſt, & ubi majus [illegible] periculum,
cautius [illegible].

16 Utrum fidejuſſor † hic ſeſe ad pœnam corporis [illegible]
poſſit, [illegible] [illegible]
[illegible]
17 [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

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ber inquiſitus, pro [illegible] ſatiſdatio, pro aliis mediate fidejuſſio [illegible] inquiſiti ad invicem fidejubeant, unus pro 18
alio, *[illegible] Romanus [illegible]*. niſi inquiſiti ſint pauperes [illegible]
[illegible] judicium poſſent, *Bart. d.* [illegible] quia reſpectu vicaria fidejuſſio eſt [illegible] ſuſpecta nec admittenda, *Jaſon.* [illegible] *ſi quis in jus* [illegible] *C de Epiſc. & Cler.*

Similis eſt [illegible] ut ad eam accedam, cautioni illi, quæ † 19
[illegible] detinetur in carcere ſubterraneo & [illegible], & [illegible] datis & acceptis fidejuſſoribus [illegible], quam fidejuſſionem acceptare teneri judicem, *Marant.* [illegible] niſi res [illegible] & delicti atrocitas [illegible] *de cuſtod. & exhib. reor.* [illegible] *Paris de Puteo* [illegible] *Marant. d.* [illegible] *num* [illegible]. † Quod nobiliſſimo carceri [illegible] 20
[illegible] vel [illegible], nec teneatur † [illegible] nobilis, *Marant. dict.* [illegible] *Tiraquel.* tamen *d.* [illegible] cedendam † [illegible] 21
[illegible], hæc ille.

CAPUT XXI.

DE PROCURATORIBUS, IN CAUSIS inditiorum.

SUMMARIA.

1. *An procurator in cauſa* [illegible] *admittendus?*
2. *C*[illegible]*?*
3. *Conſ*[illegible]
4. [illegible] *procuratore in judicio criminali.*
5. *A*[illegible]
6. [illegible] *in cauſa criminali.*
7. [illegible] *curator admittatur.*
8. [illegible]
9. *Principi* [illegible] *admittatur procurator* [illegible]
10. *In* [illegible] *fracta* [illegible] *curator.*
11. [illegible]
12. [illegible] *delinquentis.*
13. [illegible] *delinquens* [illegible]
14. [illegible]
15. [illegible]
16. [illegible]
17. [illegible]
18. [illegible]
19. [illegible]

 Quan-

1 QUanquam procuratores in cauſis capitalibus regulariter non admittantur, [illegible] *publ. iud.* [illegible] judicii publici † [illegible] procurator [illegible], *[illegible] appel. [illegible] accuſat. c.* [illegible] *c. ſi quando,* [illegible] *q.* 1. *Blan. de iudic. pag.* 24. *Vent. de Valent. cap.* [illegible] *lib.* 2. *n.* 14. [illegible] *num.* [illegible] *&* 38. ubi hanc, pro deciſione, [illegible] allegat [illegible] tentia fiat eluſoria, quia condemnato procuratore non [illegible] contra eum tanquam principalem, [illegible] innocens [illegible], quod exemplo perniciofum eſt, atque ſic crimina manerent impunita, *l.* 5. *C. de* [illegible] *l.* 6. [illegible] *de pœn.* Deinde hoc abſurdum ſequeretur, quod [illegible] conſcientia perpetrati criminis [illegible], [illegible] & [illegible] [illegible] & delicto digni [illegible], *Bart.* [illegible] [illegible] [illegible] momenti plurimum habet ad hoc, † [illegible] vultu [illegible], qualiter perſonæ [illegible] ſonam [illegible] delinquentis conſcientiam [illegible], quæ procuratore [illegible] conſiderari nequeunt, *l.* [illegible] §. [illegible] *reus,* § [illegible] *C. pub. iud.* [illegible]

[illegible]
[illegible]

Idem *[illegible]*

— — — Hunc ego [illegible]
[illegible]

3 Et [illegible] † [illegible]

4 [illegible] † [illegible]

5 [illegible] † [illegible]

6 [illegible] † [illegible]

[illegible] appareret. Itaq. propter *l.* [illegible] *C. de accuſat.* tunc [illegible] potentiores [illegible] text. [illegible] cum [illegible] in o-mnibus publicis [illegible] Hinc in causa quadam Julius [illegible] B [illegible] in perſona propria [illegible] aliquando [illegible] dus fuit in Camera referente [illegible] Schultz [illegible] *addit.* [illegible] *deciſ.* [illegible] Quod D [illegible] publicatur re-[illegible] fuit. [illegible] *d. text. in l.* [illegible] ad [illegible] [illegible] textus abunde [illegible] [illegible] 14. [illegible] criminaliter agitur, ad pœnam [illegible] condemnatur executio [illegible] in principalem [illegible] *appell.* [illegible] *§.1. ff. de pœn.* [illegible] *quæ.ext. eodem* [illegible] *§* [illegible] Quod [illegible] cum [illegible] *qui nomine, ff de fide* [illegible] *quam præſente.* [illegible] *conſil.* [illegible] *cent.* [illegible] *conſ.* [illegible] *cent.* 3 *num.*16. Etiam re-gula eſt, quod [illegible] criminaliter, contra eundem [illegible] intereſſe, *d. l.* [illegible] *nomine. Bar. in l.* [illegible] *d. loc.* nam [illegible] vel cum [illegible] intereſſe, [illegible] eadem cauſa reſultat, agitur, propter cauſa criminalis [illegible] *l.* [illegible] *§* [illegible] *de procur.* [illegible] *de* [illegible] 4. [illegible] per procuratorem de-fendi [illegible] abſentes † a quibuſcunq, defendi & quæ-8 [illegible] *prœc. l. pen. §* [illegible] [illegible] *§ de appel.* [illegible] *abſent.* [illegible] *ff. de procur.* [illegible] hanc [illegible] juxta caput de præſ[illegible]at, *jud. n.* 14. *& ſeqq.* [illegible] Fallit enim ſingulari principis † [illegible] & indulgentia 9 [illegible] non obſtan-te [illegible] non valere [illegible] ſtate [illegible] procuratorem [illegible] princeps [illegible] *de ac-cuſ. Hippol.* [illegible] *Marſil. in practica* [illegible] 17. Q[illegible] in reſcriptis [illegible] vel præcavere [illegible] pugnare, [illegible] o ut non admitta-[illegible] In Camera [illegible] † [illegible] plerea, quod poſtſcriptum [illegible] vita & [illegible] *Gail.* [illegible] *lib.* [illegible] Quamquam abſolu-[illegible] [illegible] in publico [illegible] [illegible]

vnd im Nahmen der Röm. Kayſ. Maj. vnſer [illegible] vnd erledigen wir dich N. von der [illegible] Acht / ſetzen dich [illegible] Vnfrieden in Frieden in Kayſ. Maieſt. deß H. Römiſchen Reichs [illegible] Schutz vnd Schirm / vnd in den Standt / darin du [illegible] ſen. *Gail. 1. de pp. c. 10. num. 9.* [illegible] *de pp. c. 8. nu. 24.* [illegible] *Cam. pag. 53.* (7.) Porrò exceptio [illegible] opponi [illegible], *Bart. in l. penult. §. ad crimen ff. de pub. iudic.* [illegible] opponitur, quod accuſare [illegible] *Boſſ. d. tit.* [illegible] *num. 16.* [illegible] *Marian.* [illegible] quam [illegible] opinio communis, quam cũ Bartolo [illegible] Doctores omnes, *Boſſ. d. loc. num. 6.* (8.) Quin quod [illegible] peremptoriæ [illegible] proponatur, allegetur, [illegible] vigere ſtatuti, ubi reus deliquit vel vivit, non eſſe in [illegible] ad ultimum ſupplicium reo poſſit infligi. *Idem Bart. d. loc.* [illegible] *Nellum de bannitis, p. 2. quæſt. 4.* qui inſuper requirunt, [illegible] notoria, adeò ut [illegible], ipſe judex [illegible] exceptionem [illegible] nec non [illegible] reo accuſatum. *Idem Boſſ. d. loc.* (9.) Non aliter, [illegible] pro ſalute & redemptione rei, [illegible] & deducere [illegible] implorando judicis officium pro [illegible] ſione rei vel pœnæ mitigatione. *Idem Boſſ. d. loc. num. 18.* [illegible] committitur [illegible] judicis [illegible] in judicio, [illegible] *in d. c. veniens, ext. de accuſat.* [illegible] [illegible] judices [illegible] difficiles [illegible], & [illegible] etiam ſolet repulſam dare ſupplicantibus in [illegible], [illegible] qui ſcit competere ejuſmodi exceptionem reo, [illegible] data ſecuritate ipſe ſe ſiſtat, & [illegible], [illegible] pro competenti ſpatio [illegible], [illegible]

21 *Boſſ. d. loc.* (10.) Denique cum [illegible] criminalis [illegible] [illegible] ſententia capitali. Quapropter non dubium eſt, [illegible] Syndicus [illegible] cauſa [illegible] cum mandato ſpeciali [illegible] defendere poſſit, *l. 6. C.* [illegible] *in pr.* [illegible] Quæ ſi Syndicum non [illegible] judicis officio, [illegible] compelli poteſt: Quia [illegible] & [illegible] [illegible] procedatur, [illegible]

22 [illegible] Atque competens, [illegible] (1.) Vel [illegible] [illegible] deliberent & communi [illegible] conſilio [illegible] *L. 16. & Boſſ. de pœn.* [illegible] Sic [illegible] [illegible] explicata & [illegible] in forma

[illegible]

univerſitatis ad [illegible] ad urbem [illegible], vel [illegible], non univerſitatem [illegible] [illegible] [illegible] [illegible] nihil [illegible] quod [illegible] Florentinus [illegible] [illegible] poſſe excommunicari per Papam, propterea quod [illegible] deliberatione & [illegible] [illegible] & [illegible], in [illegible] Principis, Regis, Ducis, quem [illegible] univerſitatis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], prægnantes, [illegible] *Conſt. [illegible] Car. V.* [illegible], [illegible] Cæſare, ut [illegible] bene [illegible] [illegible] in [illegible] [illegible] univerſitatem, † modo [illegible] [illegible] univerſitas [illegible], prudentiæ, [illegible] & caput [illegible] [illegible] [illegible] [illegible] in [illegible] [illegible] [illegible] [illegible] [illegible] in [illegible] † [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] *Hertium* [illegible] [illegible] [illegible] [illegible] [illegible] m [illegible], [illegible] Principi Romano [illegible] [illegible] [illegible] *Vaſq.*

At [illegible] urbium [illegible].

[illegible] in devaſtatione urbis [illegible] [illegible] [illegible] deliberationis, [illegible] [illegible]

R In

[illegible]

Unde [illegible] [illegible] & [illegible]
[illegible]

[illegible]

Hinc [illegible] per Epiſcopum [illegible] Templariorum [illegible] [illegible] in hoc [illegible] [illegible] Anno Chriſti [illegible] [illegible] Quia [illegible]

[illegible]

[illegible] Fallit quando [illegible] plura debita [illegible] dumque [illegible] per judicia demonstrata, ex [illegible] aliqua [illegible] [illegible] *Ange.* *Aretin.* [illegible] *Aretin in* [illegible] Fallit [illegible] [illegible] ex vero lege [illegible] [illegible]

CAPUT XXII.

DE DILATIONIBUS ET EXCEPTIONIBUS *dilatoriis.*

SUMMARIA.

[illegible]

NEmo ad id ſero venit, unde nunquam,
Cum ſemel venit, potuit reverti,

ait Seneca Tragicus in *Hercul. furent.* [illegible] Scribis te perterritum [illegible] ut dilationem petam & paucos dies [illegible]
15. Sunt tamen † [illegible] fugere [illegible] à fuga corporali, quam maligna [illegible]

——— *Trecenta poſſum cauſſa ſcribere.*

[illegible]

1 *Sic* [illegible] † [illegible]

[illegible]

[illegible] † [illegible]

[illegible] † [illegible]

[illegible] † [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] ad [illegible]

34 [illegible]

[illegible]

[illegible]

[illegible]

Judicium [illegible]

[illegible]

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Deliberatoria.	*Supplicatoria*
Exceptoria	*Salutoriæ.*
Appellatoriæ	*Reſtitutoriæ ſive executoria.*
Præſcriptoriæ	

Extra judiciales dilationes ſunt:

Confirmatoriæ.	*Pœnitentiales.*
Eliſſoriæ	*Conſiſtoriæ.*
Exemtoriæ	*Cautelatoriæ*
Ordinatoriæ	*Excuſatoriæ*
Præparatoriæ	

Dilationes [illegible] ſunt, quæ habentur [illegible] *poſt.* [illegible] *famati C.* [illegible]. Citatoriæ quæ [illegible] ſibi computantur 20. milliaria pro die [illegible] milliaria Gallica ſive Italica. Repræſent[illegible] ſi [illegible] *C. de* [illegible]. Salutoriæ [illegible] que in judicio. *l. ſi de* [illegible] *quis* [illegible] *cap.* Defenſoriæ, ſi quis [illegible] petit dilationem ſibi dari, qui [illegible] de defendendo [illegible] arbitrio boni viri. *l. ſervum, § an ff. de proc.* Denunciatoriæ, quibus [illegible] ad denunciandum patri vel adverſario [illegible] *quæ præter* [illegible] *C.* [illegible] ad [illegible] eligendos [illegible] *dierum l.* [illegible] *C. de* [illegible]. In[illegible] *C. de* [illegible] *ingen.* Inchoatoriæ [illegible] unde [illegible] *C. de* [illegible] *cert.* Revocatoriæ [illegible] habet [illegible] *de* [illegible]. Renunciatoriæ ſive feriales ſunt [illegible] *de feriis.* Reſtitutoriæ, quæ [illegible] rem [illegible] nec [illegible] alias ſunt 6. menſes *c. 3. quæſt. 2.* [illegible] tempore [illegible] ad [illegible] in integrum reſtitutionem. *l. fin. C. de temp.* [illegible]. Exceptoriæ, quæ [illegible] proponendas vel etiam pro[illegible] exceptiones, *c. paſtoralis.* [illegible] *de ex.* Deliberatoriæ, quæ dantur ad deliberandum reis, utrum velint cedere an contendere, quæ vulgò ſunt 20. dierum, [illegible] intereſt quispiam, ne rei præ[illegible], dum [illegible] deliberant, *l. 2. qui.* [illegible]. Præparatoriæ, quæ dantur ante vel poſt litem con[illegible] procuratores, teſtes [illegible] producendi, &c. quæ [illegible] ſunt 3. [illegible] ſpatio [illegible] quæ etiam [illegible] *c. 2.* [illegible] *q. 3.* Dilationes [illegible] & [illegible] tionem, quæ eſt arbitraria, &c. Probatoriæ, quæ dantur [illegible] ſuo, quæ vulgò ſunt 6. [illegible] *C. de dilat.* [illegible]. Deſertoriæ, ſunt in cauſis [illegible] *C.* [illegible] *& ſpectandum, C. de jud.* Executoriæ ſunt, quæ dantur rei [illegible]

S pro-

perſonali actione ad ſatisfactionem [illegible], priuſquam [illegible] *c. querentes ext. de off. deleg.* [illegible] quod ab arbitrio judicis dependet [illegible] fatalia appellandi, 2 q. 6 [illegible] *c. cum ol. Romana de Appell.* [illegible] Supplicatoriæ [illegible] *de ſupplicatio.* [illegible] Solemniæ ſunt, quas proſecutorias [illegible] quæ [illegible]æ.

[illegible] Confirmatoriæ [illegible] elecito tribuuntur [illegible] Ordinariæ [illegible] Præparatoriæ de quibus [illegible] Conciliatoriæ [illegible] eſt [illegible] dierum [illegible] § *l. ſi* [illegible] *dam.* [illegible] *de dam.* [illegible] conſare debent [illegible]

Atque [illegible] exceptione [illegible] debent [illegible]

[illegible], executioni [illegible]. Democritus [illegible], dicebat, [illegible] nullam eſſe magis [illegible] tam inimicam, quam celeritatem, celerem pœnitentiam ſed eandem ſeram atq; inutilem ſequi, cum præcipiti & raptim conſilia [illegible] revocari, neque in integrum reſtitui poſſint.

CAPUT XXIII.

DE IURAMENTO CALUMNIÆ.

SUMMARIA.

1. *A [illegible]*
2. *[illegible]*
3. *[illegible]*
4. *[illegible]*
5. *Iuramentum calumniæ an [illegible]*
6. *[illegible]*
7. *[illegible]*
8. *Qui [illegible]*
9. *[illegible]*
10. *[illegible]*
11. *Cur [illegible] iuramenta [illegible]*
12. *[illegible]*
13. *[illegible]*
14. *[illegible]*
15. *An [illegible] carcerandi.*
16. *[illegible]*
17. *[illegible]*
18. *[illegible]*
19. *[illegible]*
20. *[illegible]*

IUramentum calumniæ, quod [illegible] litis vel [illegible] & conteſtata † exactum [illegible] *C. [illegible]* *[illegible] in proceſſu [illegible]* [illegible] *Fridericus de pac. [illegible]* [illegible] in cauſis [illegible] ut iudex [illegible] debeat ab [illegible] *Arm. [illegible] ad [illegible]* *quædam [illegible]* *C. de prob.* [illegible] de calumnia [illegible] *in [illegible] publico.* [illegible] de calumnia [illegible] & [illegible] & calumniose [illegible] proceſſit. *Bald.* [illegible]

excuſari à præſumptione, non à probata calumnia, [illegible] *d.* 5. hæc eſt quidam, &c. qui [illegible] llani pœnas necnon expenſas [illegible] incidit. Multo magis [illegible] ſtigator incommodo huic obnoxii ſunt [illegible] præſtat, cum boni [illegible] probationi [illegible] re quam deſerere velint. [illegible] *q.* 7. Quapropter [illegible]

Diffamare [illegible] probare [illegible]

[illegible] *num.* [illegible] *Maſcard. de probat.* [illegible] *num.* 1[illegible] De [illegible] extat inſtitutum [illegible] 3. [illegible] quod refert [illegible] In quo decernitur, ut denunciatores & [illegible] æſtimationis & fidei, qui non [illegible] quam vero viliores & deſpectæ fortunæ & famæ, ne qui de proprio [illegible] runt ſalute, cum aliorum honore & ſalute temere [illegible]

4 duræ illæ inſcriptionis conditiones [illegible] *ut ff ad SC* [illegible] *Turpill.* [illegible] *C. de* [illegible] *l. maritus, num.* [illegible] *de qq.* Quo [illegible] eam [illegible] formidantes, [illegible] bantur, [illegible] *tr. de malef.* [illegible] lleciti [illegible] ex noſtris [illegible]

5 † haud [illegible] propter rigorem [illegible] longe plus [illegible] calumniandi [illegible] *Hyppol. de Marſil.* [illegible] *d. l.* [illegible] *Alerer. d.* [illegible] calumniandi [illegible] Sed [illegible] periuriis calumnia [illegible]

6 [illegible] *num.* 22 *Oldendorp.* [illegible] [illegible] potius periculi introducere, quam [illegible]

7 [illegible]. Quapropter [illegible] † antiquitus [illegible] Cypriani [illegible] § [illegible] refert [illegible] eſſe [illegible] dum verbis [illegible] & [illegible]

8 [illegible] † 8. [illegible] [illegible]

[illegible], non quia [illegible] sit, vel nequam dubitatum fuerit, in cauſa [illegible] juramentum [illegible] ſed quia judicum negligentia id prætermiſit. Formula vero [illegible] juramenti calumniæ haud [illegible] juxta uſitatum [illegible], mutatis mutandis, ut loquuntur [illegible] ſi de [illegible] civilibus, modo capita hæc illi inſerantur brevibus.

1. Quod accuſatores [illegible] vel relatores criminum jurent, ſe bona fide credere, quod [illegible] non calumnioſe, *l. 2. C. de juramento propter calumn. dand.* 9

2. Quod non [illegible], vel quovis pravo affectu eundem accuſent, vel denuncient.

3. Quod non celaturi [illegible] ſint veritatem ſuper omnibus, de quibus rebus vel factis interrogantur, ad cauſam ſpectantibus.

4. Quod non corrumpent teſtes tabelliones nec judicem ipſum.

5. Quod falſis probationibus nunquam utentur.

6. Quod dilationem malitioſam non petent, *[illegible] §. nunc dicamus. Marant part. 6. de jur. calumn. num. [illegible] C. de jur. propter calumn. dand. Ordin. Camer. c. ubi Ciſner. p. 1 [illegible] R [illegible]* Videntur hæc capitula comprehenſa in verſiculis illis tritis & ſequentibus.

Juramentum litem mihi juſtam jure videri
Nec celaturum ſi quid rogatus ero:
Nec [illegible] falſa [illegible]
Dilationem [illegible] ducere velle meam.

Et quamquam juramentum † [illegible] a parte adverſa, adeoque [illegible], non contemnat nec [illegible] proceſſum, *l. 2. § [illegible], C. de accuſ. [illegible]* [illegible] *Bart. in l. [illegible] ff. de jurejur. [illegible] C. de jur. propt. calumn.* [illegible] tamen idem in præſentiarum remittendum, [illegible] denunciatorem & [illegible]. † qui cum [illegible], quam [illegible] *Carol. V. art.* [illegible], [illegible] æquum [illegible] [illegible] quod ſincera [illegible] juramenti hujus religionem [illegible] publice [illegible], *l. [illegible] C. de [illegible] part.* [illegible] † ſervire non debet [illegible] jurare, *W[illegible] de [illegible].* [illegible] Sed [illegible], [illegible] juramentum [illegible], qui impoſitoſi † & p[illegible] [illegible], [illegible] ordinationem *Carol. V. [illegible] art.* [illegible] [illegible]

 tem.

[illegible], [illegible] ſe eo uſq; [illegible] ipſum delictum, [illegible] fecit [illegible] ille [illegible] in [illegible] contr. Chriſtoph. à Rolwunt, Anno 1[illegible], Pragæ [illegible]. Reſpond. ad-mittendam eſſe ſatiſdationem ejuſmodi, vel realem [illegible] ne vel in [illegible] perſpectæ, vel cautionis [illegible] delicta [illegible]
15 punita, mors † [illegible] eſt ſacrificium Dei, [illegible] *Alphonſ. Tollet.* 3. [illegible] Quæ etiam de novo emergent, novo indigent [illegible], & [illegible]
17 [illegible]io † non mutet nec corrigit animum pravum & [illegible]
18 *[illegible]*. Neque enim judex juxta proleptum † æſtimabiliter [illegible], ſed ſecundum rectæ rationis [illegible], præponderabit, [illegible] [illegible] nunquam [illegible]
19 [illegible] † ſibi facta qualiſcunque [illegible] ſama ſpirans de delicto, ubi [illegible]
20 facilè, diſcretione † ſua [illegible] carcer. [illegible] [illegible] [illegible] iuramento [illegible] tamen [illegible] judicio uſq; ad [illegible] cauſæ, [illegible]

CAPUT XXIV.

DE LITIS CONTESTATIONE IN CAUSIS judiciorum.

SUMMARIA.

1. *[illegible]*
2. *[illegible] quare [illegible]*
3. *[illegible]*
4. *[illegible] dicatur [illegible]*
5. *[illegible]*
6. *[illegible]*
7. *[illegible]*
8. *[illegible]*
9. *[illegible]*
10. *[illegible] nullum fore.*
11. *[illegible] ſtatum.*
12. *[illegible]*
13. *[illegible]*
14. *[illegible]*
15. *[illegible] plene.*

QUamquam [illegible] conteſtationem [illegible] [illegible] judiciorum eſſe [illegible], per [illegible]

[illegible] qui tamen id [illegible] cum generi, [illegible] speciem [illegible] & [illegible] R. [illegible] & qui [illegible] inſpiciemus, conſtat equidem & extra dubium poſitum eſt, cauſas [illegible], quæ par celeritate expediendæ [illegible] hoc manet, [illegible] vel accuſatorum delationes & quæ-[illegible] iudiciorum, qui accuſatorem re-[illegible] probare [illegible] um iudicis conſurge-re, & [illegible], quicunque greſſu [illegible] & [illegible] procedat, & ratio iuris evincit [illegible]. *vide Mar[illegible]. in l. in [illegible] f. de adult. Aretin. in [illegible] Idem Bart. [illegible]* [illegible] quod in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] † [illegible] nonis [illegible] & reſpondit [illegible] vel negando vel excipiendo [illegible] ctum, licet [illegible] decretum [illegible] [illegible] vices interrogando † reum [illegible] *C. qui accuſ. [illegible]* Quod ſi plores [illegible] reſpondeant [illegible] [illegible] reſponſione [illegible] *[illegible] d. lo.* Sed quid [illegible] † [illegible] [illegible] te-[illegible] [illegible] in-telligitur [illegible] [illegible] Albericus [illegible] [illegible] iudex † [illegible] conteſtetur litem, [illegible] [illegible] neque enim [illegible] concedendæ [illegible] nis, nec [illegible]

vel

vel nunquam [illegible] anno [illegible] litis conteſtationem [illegible] promovea[illegible], [illegible] ſæpe ad annos [illegible] proceſſus extendantur, [illegible] *[illegible] conſil. 1[illegible]. num. 6* referens à die mortis defuncti, de cujus hereditate [illegible] elapſos fuiſſe annos 38. [illegible] dum lis conteſtaretur, &c. quibus [illegible] tatibus & remoris merito obviare voluerunt [illegible] & ob [illegible]

8 [illegible] crim[illegible], uti ſupra admonuimus. Cautela † [illegible] judex, [illegible] proceſſus [illegible] vel [illegible] tione, uti ſimiliter diximus, litis conteſtationem [illegible] reorum reſponſionem ad cauſæ merita [illegible] [illegible] accuſatus vel relatus criminaliter [illegible]

9 [illegible] accepterlitis conteſtationem, veluti judex † [illegible] ſupplatur pro litis conteſtatione, [illegible] Summe quippe [illegible] litis conte-

10 ſtationem decenter factam eſſe ne reus † [illegible] omnia ſcilicet litis conteſtatione, quod [illegible] demum [illegible] vires [illegible], vel [illegible] quæ [illegible] & [illegible] poſſit, [illegible] *de dignit.* [illegible] *ext. ubi* [illegible] *num. 6.* [illegible] audiendus non eſt ſpeculator *lib. 3. de* [illegible] teſtatione per negligentiam omiſſa, adhuc [illegible] *4* [illegible] quæ tamen hanc [illegible] nunquam probo.

11 Interea verum eſt hoc, quod in dubio † præſumenda [illegible] de quibus [illegible] eſſe [illegible] *Spec.* [illegible] *de jur. calumn. Spec. dict. loc.* Porro quid [illegible] reſponſio,

12 † nolo conteſtari litem ſed [illegible] exceptionem [illegible] vel [illegible] tionis [illegible] religio & in continentia [illegible] eſſe [illegible] *l. 1. §* [illegible] *ff. ad exhibendum* modo [illegible] quæ præſumpta calumnia & [illegible] teſtatio [illegible] *C. de edend.* Sed [illegible] reſponſionem

13 † [illegible] litis conteſtatio [illegible] Titium [illegible] fuiſſe [illegible] Veluti cauſa civili [illegible] actor petit [illegible] reſpondet, non [illegible] [illegible] *Spec. dict. loc.* [illegible] conteſtationem [illegible]

14 [illegible] de qua [illegible] pendet. [illegible] [illegible] in [illegible] [illegible] quæſtio, nihil eſt † quod [illegible]

[illegible]

[illegible] ... Tholoſ. ... Decretal. lib. 14.

CAPUT XXV.

DE LIBELLI CONCEPTIONE IN Cauſa Criminali.

S U M M A R I A.

1. [illegible]
2. [illegible]
3. [illegible]
4. [illegible]
5. [illegible]
6. [illegible]
7. [illegible]
8. [illegible]
9. [illegible]
10. [illegible]
11. [illegible]
12. [illegible]

Refert Mudæus Vallan. in praxi ſ. parte Crim. & Canon. lib. cap. [illegible] ... libellum criminalem male & inepte conceptum [illegible] ... & ineptum & inordinatum libellum [illegible].

[illegible] de libelli ... diſpoſitione & conceptione ... Do- [illegible] ... quomodo libellus ... [illegible].

In [illegible] ... Fiſcalis vel inſtigante ... [illegible] ... 2

[illegible] ... Fiſcale ... [illegible] ... cum ... libello ... [illegible] ... reus impugnare ... exceptione ... impedire poſſet, ... in ... libellus ... [illegible] ... quidem libellus † ... [illegible] ... Clarus ... & conc. & form. lib. ... [illegible]

I

[illegible]

[illegible] iudicia[illegible]. Sicut enim [illegible] libellus regula & moderator proceſſum, [illegible]

[illegible] Porro [illegible] libellus † per articulos [illegible] ut forma [illegible] argumentum [illegible] proponatur, [illegible] ſed in articulis [illegible] & [illegible] ſyllogiſtica & propoſitionum [illegible] propoſitio [illegible] generis præmittitur [illegible] & [illegible] ſed in criminali [illegible]

6 [illegible] In tantum ut libellus † generalis [illegible] in cauſa criminali, *[illegible] num. 2. 3. 4. ff. de edendo* [illegible] in cauſa civili, libellus generalis & [illegible] pervulgata. [illegible] Ubi tamen [illegible] cum agitur, [illegible] & intereſſe, *Bart. [illegible] in d. l.* [illegible]

7 certe continere † debet libellus [illegible] nomen [illegible] actoris & iudicis [illegible] *[illegible] de edendo [illegible] l. 4. de obligat.* [illegible] poſſit [illegible] vel [illegible]

[illegible]

[illegible] *Bart.* [illegible]

Porro, quod [illegible] conceptum in causis criminalibus [illegible] nisi id quod libello deest appareat † [illegible] confeſſionem. *Socin. conſil.* 14[illegible] *vol.* [illegible] Imò cum [illegible] libellus ſuſtinetur & cō[illegible] in proceſſu annum & menſem [illegible] perpetrati [illegible] *in d. l.* [illegible] *ff. de accuſ.* [illegible] *Menoch. conſil.* [illegible] Idem [illegible] in delictis [illegible]s, quæ habent tractum [illegible] agitur libel[illegible] [illegible] non exce[illegible] [illegible] *C.* [illegible] 10 [illegible] *num.* [illegible] ſententiæ ratione, Juris [illegible] commiſſi [illegible] [illegible] *ff. de* [illegible] [illegible] *Nec* [illegible] 11 [illegible] [illegible] probet, [illegible] [illegible] ad hunc effectum, ut reum inno[illegible] & demonſtrare, eſt libellus [illegible]

[illegible]

CAPUT XXVI.

DE POSITIONIBUS ET RESPONSIONIBUS.

SUMMARIA

1. [illegible]
2. [illegible]
3. [illegible]
4. *Poſitio quid ſit.*
5. [illegible]
6. [illegible]
7. [illegible]
8. [illegible]
9. [illegible]
10. [illegible]
11. [illegible]

[illegible] 12. [illegible]

12 Quomodo poſitiones fiant ſuper [illegible]

13 Ex materia libelli poſitiones [illegible]

14 Iudex [illegible] libellum, ita poſitiones ex [illegible]

15 [illegible]

16 Poſitiones permagni & inſignis ſunt effectus.

17 [illegible]

18 [illegible]

19 [illegible]

20 [illegible]

21 [illegible]

22 [illegible]

23 [illegible]

24 [illegible]

25 [illegible]

26 [illegible]

27 [illegible]

28 [illegible]

29 [illegible]

30 [illegible]

CÆterùm, quia ut plurimum hodie concipi [illegible] [illegible] [illegible]

opere pretium fuit de poſitionibus [illegible]

quod [illegible] perfectionem [illegible]

1 inſtructam † [illegible] & [illegible]

2 [illegible] †

[illegible]

[illegible] quibus [illegible] criminalium [illegible]

procedendi [illegible] quomodo [illegible]

[illegible]

3 Conſtitutiones † [illegible]

[illegible] Iom. de [illegible]

poſitiones, ſuper quibus petit ponens adverſarium reſpondere [illegible]

[illegible]

4 [illegible] †

[illegible]

5 [illegible] †

[illegible]

6 [illegible] †

[illegible]

7 [illegible] †

[illegible]

Differunt autem [illegible] † à poſitionibus, quia [illegible] 8
nes [illegible] ex officio præ[illegible]
libel[illegible] potest. poſitiones à partibus [illegible]
& [illegible] *Specul.* [illegible] §.1. imo [illegible] litis [illegible]
ad[illegible] delatoris agitur, quæ poſitiones
req[illegible] [illegible] ſtilo † admittuntur poſitio- 9
nes ante litem [illegible] libellique [illegible] qui [illegible] re[illegible]
titur loco poſitionum, [illegible] §. [illegible] *Gail.* [illegible] *obſerv.* [illegible] *num.*
Alias ſuper qui[illegible] poſitiones fiunt, *Specul. in d.* §. [illegible] *d.* [illegible] *Gail.*
d. loc. num. 5 [illegible] † [illegible] ad poſitiones defenſo- 10
rias, ne videlicet accu[illegible] mature [illegible] prævideat
[illegible] poſſit,
Specul. [illegible] quo[illegible] loquatur, dubium tamen non eſt, quin
[illegible] hac [illegible] & reſpectivè [illegible]
reum [illegible] † enim [illegible] 11
[illegible] concurrunt, ut [illegible]
nabilis & od[illegible] dicatur, hactenus enim præ[illegible] pro parte [illegible]
nec [illegible] probetur, *arg. auth. ni ſi quis C. de* [illegible] *ff. de* [illegible]
[illegible] *mihi* [illegible] quod reus non teneatur [illegible]
dere [illegible] tione reſpondendi forè ſibi præjudicium.
[illegible] poſitiones † [illegible] 12
tur. reus [illegible] accu[illegible] poſſit, [illegible]
[illegible] C[illegible]
Diabolo extr. de [illegible] *benefic.* [illegible] poni [illegible] Clericum,
tali die & parte corporis [illegible] vel [illegible] hominum pu-
bl[illegible] [illegible] quod eſſet clericus [illegible] vide [illegible]
pſum, quia perc[illegible] erat & [illegible] habitum clericalem, &c. Ubi
libellus pridem [illegible] & deinde poſitiones [illegible] eſt, ut
ex materia † libelli poſitiones [illegible] hinc ad extenuandam 13
c[illegible] form[illegible] [illegible] *quæſt.* 4. [illegible] crimina-
[illegible] admit-
tendas. [illegible] † [illegible] libellum rejicere po- 14
[illegible] 15
[illegible]
[illegible] Hucu-
quid de poſitionibus [illegible] An [illegible]
ſimula[illegible] im[illegible] [illegible]
notabi[illegible] & protocollo [illegible] † [illegible] 16
[illegible]
pon[illegible] dedu[illegible] quæ [illegible]

 nia

nia [illegible], quod ut ad omnia litis membra, ſicut poſitiones [illegible] extenditur, proinde dicitur [illegible], quod [illegible] audiatur, cum nimis indignum [illegible], quod quis [illegible] tus in eundem caſum valeat ſuo [illegible] *ap.* [illegible] *bat.* hinc proponens ſecundum [illegible], quod proponit, pro confeſſo habetur, [illegible] *ff. de confeſ.* niſi quis facti alieni ignorantia lapſus fuerit, *l. error* [illegible] *& fact. ignor.* Alias [illegible] contra poſitiones.

1. Quod ſint ſuperfluæ, contrariæ ſibi invicem, quibus [illegible] pars adverſa non tenetur, *c. cum* [illegible] *de* [illegible] *ib.* niſi [illegible] ſit ea, quæ ſibi adverſari videbantur, *arg. l.* [illegible] [illegible] contrariorum [illegible] potentia contrarii, quia eadem potentia [illegible]

[illegible] *l. 1. C. de* [illegible] quin [illegible] quæ ſe compatiantur in [illegible] & effectu, [illegible] *emi* [illegible] *idem in l. 1. C. de* [illegible] contraria, [illegible] et copula non [illegible]

16 [illegible] ſententia & [illegible] *l.* [illegible] *Titio fundum* [illegible] *de* [illegible] *legat.*

2. Quod ſint ſuperfluæ [illegible] [illegible] † verò dicitur poſitio, quæ [illegible] in libello expreſſam [illegible] poſitio [illegible] ſuperflua admittere, quam neceſſaria repudiare, [illegible] *ff.* [illegible]

3. Quod ſint obſcuræ, quibus etiam reſpondere non tenetur [illegible] *arg. c.* [illegible] *muliere, extr. de ſponſalib.* de [illegible] dictũ, niſi [illegible] ambiguitas. *l.* [illegible]

2[illegible] [illegible] † vel [illegible], quod [illegible] *6.* [illegible] *Bart.* [illegible] Quod [illegible]

[illegible]

4. Quod ſint generales [illegible] [illegible] † generalibus [illegible] [illegible]

5. An [illegible]

[illegible] Cornelia de ſicariis. Neq; enim cog[illegible] [illegible] eſt [illegible] factum incertum, [illegible] [illegible] [illegible] poſitiones ejuſmodi partim quoque [illegible] [illegible] ſunt repudiandæ, *c. 24. q. 4.* [illegible] [illegible] Quod nemo † tamen confiteri co[illegible] 23
[illegible] involvens & inferens ex reſpon[illegible] [illegible] & [illegible] captioſa reſp[illegible] [illegible] reſpondere non poſſit, ut cum [illegible] certus non ſit, ita autem impli[illegible] [illegible] prodere cogatur, *c. cum con-tingat.* [illegible] quæ ſpectant calumnioſæ poſitiones, [illegible] † numero ſpe- 24
[illegible] Porro [illegible] poſitio- [illegible] a partibus [illegible] vel [illegible] *Clar* [illegible] *num.* [illegible] Quibus [illegible] [illegible] propter quæ [illegible] [illegible] quod [illegible] ſuſpectum [illegible] [illegible] quodammodo [illegible] [illegible] teſtem, concepta, [illegible] [illegible] conſcientiam comparata, nullius eſſe [illegible] [illegible] dicta. [illegible] † 25
[illegible] ad per[illegible] [illegible] ab [illegible] [illegible] Commiſſarios [illegible] vel [illegible] [illegible] Quod [illegible] † non [illegible] adverſæ par- 26
[illegible] ca[illegible] Albi [illegible] [illegible] [illegible] habeatur, [illegible] [illegible] contumacia, quod verò [illegible] non [illegible] [illegible] † [illegible] 27
poſitiones repertæ [illegible] & [illegible] ab immenſo probandi onere, [illegible] poſitiones [illegible] [illegible] involvemus. [illegible]

dicæ-

[illegible] [illegible] reſponſionis ad poſitiones, [illegible] [illegible]. *[illegible] de [illegible]* [illegible] [illegible]
18 [illegible] *Specul.* [illegible] quod in cauſa criminali † [illegible] [illegible] [illegible] parte [illegible] confeſſionem [illegible] [illegible] *parte* [illegible], *vide Clar in pr[illegible]* [illegible] 41, [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
19 [illegible] dicti reſponſis † obiectus pro non dictis habe[illegible] [illegible] *[illegible] de probat.*

CAPUT XXVII.

DE IVRAMENTIS DANDORUM ET Reſpondendorum.

SUMMARIA

1 [illegible]
2 [illegible] *Clari* [illegible]
3 *Quod* [illegible]
4 [illegible]
5 [illegible]
6 [illegible]
7 [illegible]
8 [illegible]
9 [illegible]
10 [illegible]
11 [illegible]
12 [illegible]
13 [illegible]
14 [illegible]
15 [illegible]

1 SI poſitiones [illegible] [illegible] [illegible] [illegible], conſequenter, † [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], *Clar in pract.* [illegible] 4. [illegible] [illegible] [illegible] poſitiones [illegible] [illegible] [illegible] reſpondere, [illegible] *querelam* [illegible] [illegible] [illegible] [illegible] [illegible] reſpondendum [illegible]

[illegible] Google

R[illegible] quod pari ratione [illegible] bus in [illegible] recept[illegible] cum [illegible] ut quoq; *Speculat.* § [illegible] rem [illegible]

8 [illegible] quippe [illegible] [illegible]

9 *In* [illegible] † iudiciorum poſitiones & reſponſiones [illegible]

10 [illegible] lemam, [illegible] blica [illegible]

11 [illegible]

12 [illegible]

13 [illegible]

[illegible] probatio, [illegible] quod actor [illegible] poſſit condemnatus appellare. Quia [illegible] 16
[illegible] appellare, [illegible].
[illegible] appellationem [illegible] 17
[illegible], vel [illegible] executio, *vide Clar. in pr.* [illegible]
[illegible]

C A P U T XXVIII.

DE PROBATIONE INDICIORUM

S U M M A R I U M

[illegible]

I[illegible] Ad [illegible] & [illegible] Clar. [illegible]

gloſſa infra declarab mus. Atque [illegible] teſtes iurati eſſe debent, [illegible] tamen [illegible] adhibetur fides, quanquam [illegible] dignitate [illegible] *de fid. in* [illegible]

Quando [illegible] iudex [illegible] & protocollo inſerit [illegible] per quaſcunque [illegible] prout cauſæ [illegible] dum caput antecedens. Ubi [illegible] per Fiſcalem [illegible] [illegible]

[illegible]

[illegible] deber, ne [illegible] propter [illegible] inde [illegible] cum [illegible] in innocentem [illegible] quam [illegible] cum [illegible] authoris demum poena [illegible] *C. de pœn.* Quapropter [illegible] ſolam [illegible] vel unico eoque [illegible] cogi [illegible] in [illegible] dolere, unde [illegible] *Rebuff. in tract.* [illegible] *pag. mihi* 174, obſtare [illegible] ut Galli [illegible] quia [illegible] *de pœn.* ubi [illegible] *Hippol. de Marſil. in pract.* [illegible] Nec [illegible] *Rebuff.* [illegible] appellatione [illegible] quam hoc [illegible] Neque enim [illegible] quam perdere [illegible]

Quidquid [illegible]

Hos [illegible]

De [illegible] & [illegible] *Marſil.* [illegible] Adverte [illegible]

[illegible]

[illegible]

[illegible] tamen [illegible] vel collusio [illegible] non [illegible] est, [illegible] accusatore non existente, vide [illegible] d.loc. Denique [illegible] ad quaestionem non [illegible] [illegible] tart. passim [illegible] [illegible] ubi [illegible] verba: [illegible] vnd [illegible] [illegible] arbitraria, 12 quae [illegible], nam ut Callistratus ait pro mensura qualitate [illegible] constituendam est in delinquentes, l. [illegible]

CAPUT XXIX.

DE RECEPTIONE TESTIUM IN CAUSIS [illegible]

SUMMARIA.

[illegible]

6 [illegible]

[illegible]

PO[illegible] & [illegible] Ante [illegible] vel ipsis accusatoribus, vel [illegible] l. [illegible] de rigor. [illegible]

[illegible] Quia [illegible] est, [illegible]

[illegible]

[illegible] 4. de Republ. cap. [illegible] 16.] Porrò excipi poteſt in hoc [illegible] tam adverſus producentem quam teſtes, quod ſint infames, perjuri, & calumniæ retro con[illegible], quam exceptionem [illegible] in continenti probare poterit reus, procul † dubio examen [illegible] quandum hæc exceptio eſt expedita, ſuſpendi poteſt, 5
quoniam hæc exceptio [illegible] *Borell. conſ.* [illegible] *n.* 1[illegible]. *& conſ.* 48. *n.* 9. Sin verò ex pluribus † teſtibus unum vel alteri ſaltem hæc exceptio oppo- 7
natur, examen quoad cæteros [illegible] perficietur. Neq; enim utile per inutile vitiatur, quoties utile [illegible] ſeparationem ab inutili. *D.* [illegible] *in c* [illegible] *de R* [illegible] Hoc eandem [illegible] expedita neq, obſtantibus rebus, quæ uti partim notavimus, [illegible] eundem judex recipiat juramentum [illegible] Evangeliis vel qualibet [illegible] libro, vice Evangeliorum. *Gabriel. Rom lib.* 2 *conclu.* [illegible] *num.* 36. [illegible] 91. quod olim flexis genibus [illegible], *Warmund.* [illegible] *tract.* [illegible] *p.* [illegible] *n.* [illegible] aliis [illegible] *Novel.* 4[illegible] [illegible] de retacet, & nonnunquam [illegible] [illegible] *Alex. ad Alex. lib.* [illegible] *Virgil.* 12 *Æneid.*

Tango [illegible] *m. dso* [illegible] *& numina teſtor*

Et Juvenalis:

Atq; ita [illegible] *quecunq; altaria tangunt.*

Formulæ [illegible] juramentorum variæ [illegible] reſtrunt [illegible] 8
[illegible] juramentalibus [illegible] refert, [illegible] Si Deus [illegible], &c. *Jaſon. in* [illegible] *ff. de jurjur.* Vivit anima mea, vel [illegible] mihi addat Deus, id eſt malum. *c.* 1[illegible] *queſt.* 1. vel conſcientia mihi teſtis, *gl.* [illegible] *d. c.* 12 *queſt.* [illegible] Deus mihi teſtis, 1. *R.* [illegible] *Jaſon. d. l.* [illegible] Porro per ſanctos [illegible] adhuc mos eſt, [illegible] in judiciis Catholicorum vel per ſanctos [illegible] Nonnunquam per [illegible] & creaturas, per [illegible] Dei, *Treutler. p.* [illegible] *diſp.* 10. *theſ.* 1. non pauci per barbam jurarunt, uti [illegible] & adhuc [illegible] Thraces ſcribit *Joh. Jac. a Bruck* [illegible]
Sic Otto Primus, cum [illegible] Epiſcopo [illegible] in vigilia Natalis Chriſti in templo alapam dediſſet, ultra [illegible] vindicaturum [illegible] ab Epiſcopo ſibi [illegible] per barbam jurans, *Johan. Wolf. lect. mem cent* [illegible] *pag.* [illegible] 158. [illegible] per barbam juravit in quadam adulterii cauſa. *Idem Wolf.* [illegible] per [illegible] per Cœlum & Terram, Solem, Lunam & omnia elementa juratum fuiſſe, unde idem *Virgil.* 12. *Æneid.*

Eſto [illegible] *mihi Terra precanti,*

Et Pater omnipotens, & tu [illegible] *Juno.*

Ovid. 1. *metamorph fab.* 6. ipſos Deos à juramento [illegible] jurantes per aquam, ibi

——— Per flumina juro.

Alias Romani jurabant per ſalutem principis, § [illegible] *l.* [illegible] *de* [illegible] *hæred. Bart. in l.* 2. *ff. de reb. credit.* vel per [illegible] principis, quam [illegible]

[illegible] de [illegible] ipsos Principes verò jurasse per [illegible], lapidem, [illegible] quodlibet referri [illegible] *[illegible]* quo spectat *Plautinum [illegible] Aulularia.* [illegible] dicit per bonis [illegible] & ego [illegible] bant [illegible] tenebant & verba [illegible] *[illegible] pag.* [illegible]. [illegible] *apud* [illegible] [illegible] Nec [illegible] Castorem aut Pollucem [illegible] jurabant, nec [illegible] formulam describit *Virgil. 4. Æneid.* *[illegible]* *ro,* — *Per [illegible]* &c. Per Junonem [illegible] *capite* [illegible] apud Plautum [illegible] juramentum [illegible] [illegible] & [illegible] tempore [illegible].

[illegible]
Non per Nili [illegible]
[illegible] per Deos, Deum
[illegible]

[illegible] Imperatorem [illegible] formulam [illegible] *[illegible] de [illegible] part. 2.* [illegible] modis [illegible] hodie [illegible]. [illegible] Apocalypsis [illegible] *Angelu[illegible]* [illegible] & super terram [illegible] [illegible] juramentum [illegible] [illegible] & [illegible] [illegible]

[illegible]

[illegible] Seel [illegible] der Menſch [illegible] verborgen iſt [illegible] vnd kleine Finger [illegible] als [illegible] kleine iſt / zu rechnen gegen der Seelen vnd [illegible] Hals [illegible] ein Gott / ein Schöpffer / der alle Creaturen auff Erden [illegible].

Welcher Menſch [illegible] / vnnd fälſchlich oder falſchen vnwarhafftigen [illegible] in allermaſſen / als ob er ſpreche: So wahr als ich falſch [illegible] Gott den Vatter / Gott den Sohn / Gott den H. Geiſt [illegible] Dreyfaltigkeit / daß ich außgeſchloſſen vnd außgeſtoſſen [illegible] Gemeinſchafft Gottes vnd ſeiner Heiligen / ſey ein Fluch [illegible] meiner Seelen.

Zum andern / wo ich falſch [illegible] / ſoll GOTT der Vatter / Gott der Sohn / Gott der H. Geiſt [illegible] Warheit [illegible] lieben HERRN [illegible] Jeſu Chriſti / mit [illegible] Troſt [illegible] Hülff [illegible] Ende [illegible] Sünde [illegible] vnd [illegible] ſich ſcheiden.

Zum dritten / wo ich falſch ſchwere / ſo [illegible] Gott den Vatter / Gott den Sohn / Gott den Heiligen Geiſt / vnd [illegible] HErrn Jeſu Chriſti / daß [illegible] vnſchätzliche [illegible] ſein [illegible] ſein Noth / ſein bitter Leiden vnd Sterben / [illegible] an mir armen Sünder [illegible] vnd verlohren werden.

Zum vierdten / wo ich falſch ſchwere / ſo ſoll [illegible] Seele [illegible] durch den [illegible] Finger / vnd [illegible] Leib [illegible] Finger [illegible] Jeſu [illegible] Menſch [illegible] Gericht [illegible] vnd [illegible] heilſamen [illegible] Gottes [illegible] HErrn Jeſu Chriſti. (R) [illegible] de perjurio [illegible] divina & humana, [illegible] & [illegible] perjurium † eum Deum [illegible] & nullum perjurium [illegible] impunitum ex [illegible] Wesem. de [illegible]; [illegible] ipſis Principibus [illegible], [illegible] jurandi [illegible] Scripturis [illegible] lib. [illegible] Regum vel Imperatorum [illegible] &c. [illegible] Quod [illegible] jurare, [illegible] Fürſtlichen oder Adelichen [illegible] extendit [illegible], non [illegible] laice [illegible]. Verum [illegible] praxi [illegible] quam [illegible] pro [illegible] & mero ludibrio. [illegible] Canon [illegible] modi admitteretur [illegible] corporaliter [illegible]

ab ipſis Principibus non Conſiliariis tradi [illegible] *Erenberg.* [illegible] Johannem Ducem B. corporale juramentum coram C[illegible] præſtitiſſe, refert [illegible] *decis. German. deciſ.* Sic in aula Dreſdenſi [illegible] Saxon[illegible] Electorales [illegible] perſonas illuſtres teneri pariter præſtare juramenta in [illegible] *Erenberg præcitato loco, num.* 124. quia inquit [illegible] magnoperè curant, longe aliter ſentit *Gail.* 1. *obſ.* [illegible] *num.* 11. [illegible] cam de occulta perjurii vindicta, et que divina, refert [illegible]

11 † Elfredum Eleredus, qui conſpirationis contra [illegible] Angliæ Regem Princeps habebatur, dum Romæ ad altare S. Petri [illegible] Johanne Pontifice, ſui purgandi gratia jurare cogeretur corruiſſe, & [illegible] mortuum eſſe. Sic Goduinus Cantianorum Comes, Anglis [illegible] III. Alfredum Etheldredi Regis F. revocantibus ipſius [illegible] calumniis circumvenit per inſidias in itinere necavit [illegible] E-duardum III. Alfredi fratrem ad regnum vocandi Edoardus [illegible] in fratrem commiſſum condonavit, ejus filiam [illegible] perduellionis reum in integrū reſtituit. Verū Goduin[illegible] gere potuit meritū ſupplicium. Accidit, ut Haral[illegible] lum miſcebat, Eduardo prandenti daret bibere. Is [illegible] ne lapſus, auxilio alterius pedis ſeſe à caſu recepit [illegible] effeint. Tum pater, qui cum Rege diſcumbebat: [illegible] innuit ad hanc vocem etſi per iocum emiſſam Eduardus [illegible] in memoriam ei venit ſubitò interitus Alfredi [illegible] ait: Sic mihi meus frater auxilio eſſet, ſi per te licuiſſet [illegible] [illegible] cæpit ſeſe excuſare [illegible] [illegible] per inde [illegible] [illegible] Rex quicquam in [illegible] natus ſum precor, ut [illegible] panis [illegible] dixerat ſumpto pane, ſubito [illegible] faucibus [illegible] [illegible] Polydorus *lib.* 8. Sic Michael, [illegible] [illegible] commercium [illegible] Reginæ interrogaret [illegible] [illegible] ſe ac ex [illegible] [illegible]

[illegible]

ſit *Cu[illegible] Zonara.* L[illegible] Boſonis filius, provinciæ ac Burgundiæ regis per [illegible] Italiam, regnum invaſit. Verum captus à Berengario [illegible] conditione [illegible] ne in Italiam revertatur. Paulò pòſt autem oblit[illegible] juramenti [illegible] cum exercitu, verò non capit. [illegible] captus à Berengario oculis & teſtibus privatur, *Zvinger. in theatr. human. vitæ, vol. 19. lib. 11. pag. mihi. 517.*

CAPUT XXX.

DE TESTIBUS COGENDIS.

Summaria.

1. *T[illegible] in cauſa criminali [illegible] magis publicum m[illegible], quam in ci[illegible] negotio.*

2. *Teſtes [illegible] edictis & pœnalibus coerceri poſſunt.*

3. *An teſtis [illegible] ad [illegible] ſe[illegible] nec pandere nec manifeſtare [illegible].*

4. *[illegible] in[illegible] injuriarum [illegible] potest.*

5. *[illegible] jure C[illegible] teſtis poſſit compellendi [illegible], ardua quæſtio eſt, [illegible].*

6. *Ant[illegible] mentiuntur.*

7. *Cum Canones inter ſe repugnant, priores præferuntur poſterioribus.*

8. *E[illegible] decreta P[illegible] cum.*

9. *Eccleſia [illegible] ſubſiſtitur.*

10. *An jus Canonicum de[illegible] juri Civili?*

11. *Jus Canonicum [illegible] non ut papale, ſed liber[illegible] comb[illegible].*

12. *Legum ſpontanea commu[illegible] ſub [illegible]onem.*

13. *Co[illegible] Juſtinianeo & Theodoſiano [illegible] tuntur Juri[illegible].*

14. *Ga[illegible] jus [illegible] noſtrum [illegible].*

15. *Papa non poteſt mutare jus [illegible] feudale.*

16. *Oportet omnes Canones [illegible] conſiderare.*

17. *Argumentum à vitatione abſurdi & [illegible] eſt validiſſimum.*

18. *[illegible]*

19. *Co[illegible]*

20. *Teſtes [illegible] poſſunt in [illegible] declarari.*

21. *Teſtis [illegible] rare poteſt.*

22. *Teſtis contuma[illegible].*

23. *[illegible] poteſt [illegible].*

24. *[illegible] judex ut [illegible] authoritate [illegible] ingenio [illegible].*

TEſtes ad dicendum teſtimonium compelli poſſe extra dubium eſt, cum teſtari † 1 in cauſis criminalibus magis ſit munus publicum, quam in civilibus teſtimonium perhibere, ubi quiſque invitus teſtis eſſe debet, *l. [illegible]* 1 *6. [illegible] teſtam. quemad aperi[illegible]. S[illegible] 6 [illegible] num. [illegible] juncta, l. [illegible] lib* ubi officium publicum [illegible]. *V[illegible] ext [illegible] gend.* nempe ne veritas [illegible] *[illegible]am, 14 [illegible]* peccatum eſt mort[illegible] *cap. [illegible] q. [illegible] cap. [illegible]* [illegible] teſtes † contumaces edictis & mandatis [illegible]

 quam-

quando, C.de [illegible] quos non [illegible] tati in genere, [illegible] *apud* [illegible] juramenti, adſtringentes ſeſe [illegible] quod nullum [illegible] & pandere delicta vel [illegible] eorum, cum juramentum [illegible] mores nec obliget [illegible] *c. pervenit,* [illegible] *& DD.* [illegible]
4 *corend.* [illegible] *num.4.* [illegible] † [illegible] ſecreta, non tenetur extra hunc caſum manifeſtare [illegible] & conſcientiæ periculum, §. *in Chriſti nomine, de pœn. e Confeſſ.* [illegible] [illegible] ad [illegible] *l. 4.* [illegible] & nonnunquam talis *l.1.§. is qui,* [illegible] *ad l. Cornel. de falſ.* [illegible] in periculum inciderit is, ejus ſecreta [illegible] neque [illegible] quandocunq; [illegible] *l. Cornel. de falſ.* An & quando ſacerdos teneatur pandere [illegible] ſa ſub confeſſione auriculari [illegible] *part.* [illegible]
5 Feliciter † refragatur priori ſententiæ de teſtibus [illegible] communem DD. [illegible], quæ [illegible] ſtatuit nõ invitos recipiendos eſſe teſtes in [illegible] *per tex. in cap. dilectorum, ibi,* [illegible] *glo. & Canoniſtæ communit.* [illegible] inter alia [illegible] Quia [illegible] nemini eſſe debet damnoſum. [illegible] munus, [illegible] in capitalibus [illegible] *Maſcard. de probat lib.1. cap.6* [illegible] *Felin. in d.* [illegible] §. [illegible] *num.* [illegible] *Avan.* [illegible] ſententiam [illegible] compellere teſtes [illegible] quod [illegible] teſtes compellendos eſſe [illegible] [illegible] *teſtib. cogend.* ubi dicitur: Quod [illegible] ſtionibus non [illegible] teſtes ad [illegible] compellendos [illegible] [illegible] *Toxiu* [illegible] [illegible] quod [illegible] [illegible] [illegible] [illegible] [illegible] ſententiam [illegible]
[illegible] † [illegible] *de app.* [illegible] [illegible], quum [illegible] [illegible]
[illegible] Quid † [illegible]

pro [illegible], *[illegible]*, [illegible] & pie [illegible]: Quod † Evangelium vin- 8
cat [illegible], quia antiquius & prius fuit Papis, [illegible],
[illegible] ap [illegible] [illegible] juncto capit. à nobis *de [illegible]. ex [illegible]* ubi
dicitur: Quod Ecclesia [illegible] fallat & fallatur, *[illegible]. Baptista Z[illegible]* 9
conſ. [illegible]

Porro [illegible] Holſtein [illegible] ex iisdem fundamen-
tis per [illegible]. At jus † Canonicum licet poſterius ſit jure Civili, 10
derogat tamen [illegible] per expreſſam [illegible], *arg. [illegible] ad L. Aquil. l. fin.*
ff. [illegible] con[illegible], ita verò [illegible] quoties alterutro jure aliquid
expreſſum eſt, quod in altero [illegible], toties eam deciſionem ex-
preſſam in utroque valere foro *[illegible] de [illegible]. in [illegible]. n. 23. C. ſi*
contr. jus [illegible]. Alterum jus enim per [illegible] ſuppleri, *Panorm. in*
cap. ſuper [illegible] & c. [illegible], extr. de appellat. [illegible] de [illegible] 1.
n. [illegible] Quæſt. conſil. [illegible] n. 5.

Sed ut ut ſit, non verſamur hîc inter [illegible], ubi canones ſe invicem
collidunt & repugnant, nec in territorio vel [illegible] ſine [illegible] jus
Pontificum ſervare [illegible], in Romano Imp. [illegible] Canonico [illegible] &
[illegible], † non ut jus papale, ſed [illegible] & 11
[illegible] conſenſu id receptum eſt, *[illegible]*
conſ. [illegible] neque † enim legum [illegible] 12
[illegible] *[illegible] ff. de orig. jur.* non [illegible] Romani in ſe [illegible]
[illegible] Græcorum, cum ll. 12 tabularum [illegible] &
[illegible] quemadmodum † Reſpublica [illegible], dum [illegible] 13
noſtro [illegible] utitur, in [illegible] Imperio [illegible] non [illegible]
[illegible] non aliter receptum [illegible] † 14
[illegible] in [illegible] [illegible] jus Feudale [illegible]
[illegible], ubi jus proprium [illegible]
te Sole, Lunam non [illegible] *[illegible] art. [illegible]* [illegible] 15
Rechi [illegible]. [illegible]
[illegible] in jure Ci-
[illegible] jure Canonico autem [illegible], quod nunc jus Canoni-
[illegible] *[illegible] per [illegible], [illegible]bus*
[illegible].

Reſpondeo [illegible] jure Civili non eſſe anceps vel dubium
per [illegible]
brocardicum [illegible], & [illegible] hoc pacto. Quan-
do jus Canonicum [illegible] expreſſè [illegible] jure Civili, [illegible]
terris [illegible] jus Canonicum [illegible] Imperii jus Civile, *[illegible]*
in cap [illegible] de [illegible] [illegible]
ic [illegible] *de Reg. [illegible]* [illegible]

[illegible]

16 [illegible]nones † [illegible] generis. Prioris generis [illegible] fidem & doctrinam, qui [illegible] non [illegible] five per univerſalia five per provincialia concilia & ſynodos [illegible] tum obſervandi, in quantum a fonte divino non [illegible] in [illegible] Seculari quàm Eccleſiaſtico, &c. Nec potuit obſtar. [illegible] quod aperte diſtinguit inter jus canonicum & civile [illegible] paſſion poſſint de juris humani rigore compelli. Et [illegible] *per [illegible]. 8. eodem tit.* decidit & tollit omnem controverſiam [illegible] ſtis, qui nominati fuerint, perhibere teſtimonium veritati [illegible] faciat ſubjecta, & quicquid de inimicitia capitali, [illegible] aſſerebatur, hæc ratio frivola eſt & admodum generalis. [illegible] evacuarentur probationes in genere, [illegible] S. [illegible] demum omnes furcæ in viduitate, ſed quæ ratio per [illegible]
17 elidit[illegible], [illegible] non debet, [illegible] † verò à [illegible] ſcandali, [illegible] inconvenientis depromtum in jure validum eſt [illegible]
18 *in top. in loc. ab abſurd.* Sed quomodo † teſtes inviti [illegible] [illegible] quæ [illegible] ſupra [illegible] teſtes, [illegible] *num.* [illegible] poſſe, ait idem [illegible] pecuniaria, *num.* [illegible] ubi ait: Quod eruditi Commiſſarii [illegible] ſoleant teſtes ad certum locum & tempus, [illegible] ſub pœna pecuniaria, in quam durante contumacia per Commiſſarium [illegible]
19 [illegible] Commiſſarii † enim [illegible] *cap. ſane, Clem.* [illegible] *§. fin.* [illegible] quam ad pœnam publicationis bonorum uſque extendi [illegible]
20 [illegible] † contumacem teſtem in bannum [illegible] reum, *Angel. de Peruſio in tract. de teſtib.* [illegible] [illegible] poſteriores [illegible] eſſe teſtes. *Bart.* [illegible] quam [illegible] ex [illegible]
21 civiles, [illegible] capitis [illegible] compelli [illegible] [illegible] & carceri emancipetur. *Bart.* [illegible] [illegible] procedendum eſſe [illegible] hunc teſtem [illegible]
22 [illegible] crimine [illegible] † [illegible] [illegible] poteſt contumacem, [illegible] [illegible] Nec dubium eſt, [illegible]
23 quod teſtes contumaces, [illegible] † [illegible] contumaciam & [illegible], & [illegible] judicii [illegible] contumaci [illegible]
24 [illegible]
[illegible]

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An conſanguineus vel affinis defuncti de cujus morte vindicando agitur, vel num inimicus accuſati, poſſit teſtari in cauſa homicidii.

1. Quod conjunctos attinet, illi videntur ex omni aſſe admittendi ad dicendum teſtimonium, *Bart. in l. parentes, nu. 5. C. de teſtib. Boſſ. in tract. crim. in tit. de oppoſit. contr. teſtes, n. 115.* [illegible] *Viv. in com. opin. verbo teſtes, affines. Menoch. de arbit. jud. qq. lib. 2. caſ. 124. Hect. Æmil. de teſtib. p. 1. verb. teſtis, num. 16. &c.* quam ſententiam veriſſimam eſſe & in opinionem communem tranſiiſſe refert & teſtatur *Gloſ. in c. antecedente* [illegible] *ut lite non conteſtata &c.*

2. Porrò hanc opinionem uti certiſſimam approbat & multis rationibus ſtabilit, *Alb. de Roſat. de teſt. p. 1. [illegible] pag. 48.* [illegible] *Boſſ. dict. loc.* ubi inducit patruum pro nepote eſſe admittendum teſtificante, nec non conſobrinum pro conſobrino teſtimonium ferente, *Hector Æmil. d.* [illegible] *inducentes affinem pro affine.* Quid ſi ergo in præſentiarum conſanguineus pro conſanguineo? Par tum ſane idem eſt judicium. [illegible] *in loc.* a pari, infirmitas quippe eſt in [illegible] de [illegible] bus quærere legem, *Conrad. Lag. part. 1. jur. Civil. cap.* [illegible] *num. 2.*

3. Accedit, quod ſi qua fides juxta Dd. nonnullos ſubtrahatur conſanguineis teſtificantibus uti atteſtatur, *Bart. dict. l. loc.* ea tamen contra [illegible] ſtringit nec quavis ratione debilitetur, cum verſatur quæſtio in materia difficilis probationis, qua in re teſtes inhabiles & parum idonei regulariter admittuntur, *Albert. de Malet. in tract. de* [illegible] *cap. 6. numer. 18.* Sed caſus noſter ita eſt comparatus, ubi teſtium non patet haberi copia, omni exceptione majorum. [illegible] inhabiles in ſubſidium admittantur, nempe ne veritas ſubvertatur, [illegible] *2. quæſt. 3.* & per inopiam probationum res diſſolvantur. Reipublicæ enim intereſt, ut delinquentes pro admiſſo coerceantur, *lib.* [illegible] *ff. de* [illegible] *præſ.* [illegible] quoties criminoſi evadant impuniti, *l. 2. Cod. de Epiſc. audien.* [illegible] poſſe conſanguineos ad teſtificandum refert & docet, *Gloſ. in l. lege* [illegible]*, Cod. de teſtib. Gom.* [illegible] *reſolut. 13. rub. de probat. delict. n. 24. Maſcard. de probat.* [illegible] *4. n. 2. lib. 1.*

4. Ponderandum eſt, quod atteſtatio conſanguinei [illegible] licet debilior & admittatur propter natam contradictionem, vel [illegible] exceptionem, ſufficit tamen & plenam inducit probationem [illegible] teſtimonium [illegible] ſupplet [illegible], *Maſcard. de prob. 1. concl. 68. Carn. conſil.* [illegible] *2. n. 22. lib. 2.* [illegible] conſanguineus conteſtem extraneum habet, qui legalis videtur & omni exceptione major. Ergò.

5. Idq; tanto fortius, Quòd ab initio & ſub ingreſſu examinis teſtium, accuſatus non excepit adverſus perſonam teſtis. [illegible] malitium eſt, quod [illegible], ſic tacito partium conſenſu habilitentur

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con ſanguinei, *Aufrer. de reprob teſt. num. 25. verſ. 4.* *Maſcard. de probat. concl. 4* [illegible] *num. 19.* a qua doctrina nunquam [illegible] *Gabriel. d. concl. 1* [illegible] *num. 1* [illegible] *in rub. de teſtib. vide Farin. de teſtib.* [illegible] *14. num.* [illegible]

Sed hæc ſunt dubitandi argumenta: jam decidendi rationes [illegible] ſubjungentes, & [illegible] ad argumenta dubitativa reſpondentes.

Scutum fortiſſimum & inſuperabile ſuppeditat pro [illegible] *in princ. ibi vel amicus,* [illegible] *de teſtib.* [illegible] *ſimiliter que* [illegible] ubi nedum accuſator affinis admittitur [illegible] teſtis [illegible] §. 1. *num. 4. Bald. conſil.* [illegible] *volum. 2.* *Alex.* [illegible] & plurimi a Dd. citati, quos partim quoque allegat *Farinac.* [illegible] regula itaque in primo hujus quæſtionis capite [illegible] patet, quod conjuncti per affinitatem vel conſanguinitatem, tanquam non idonei teſtes, [illegible] non faciunt legitimam & integram probationem, *per text. in d. c. ſimiliter* [illegible] *& c.* [illegible] nei & affines teſtes reprobantur [illegible] omnium [illegible] *cul. de teſtib. d. l.* [illegible] *Montice* [illegible] *verbo conſanguineum,* [illegible] *plures ab eodem citati* [illegible] *d. c. ſimiliter.* [illegible] ncio tenetur repellere teſtes conſanguineos & affines, [illegible] tacente, ne [illegible] judicia ſanguine humano [illegible] primatur [illegible] teſtimonio falſorum teſtium, *vide Maſcard.* [illegible]

2\. Adde quod quanquam cauſa fiſcalis [illegible] nec non fiſcus ſua peculiaria teneat jura & privilegia, [illegible] Fiſcali, vice Reipublicæ agenti extra [illegible] gratur, *Bald. in l.* [illegible] *4. C. ſi advers. liber.* [illegible] eſt, quia etiam hoc in [illegible] qui ſiquidem probare [illegible] ſtagit teſtimonio [illegible] probare [illegible] *quis* [illegible] *per* [illegible] *Cod. de teſtib.* [illegible] *Alber.* [illegible] *de teſtib.* [illegible] conclusionem ab omnibus [illegible] *num.* [illegible] *Corn. conſil.* [illegible] *Clar. in pr.* [illegible] Fiſcalis de calumnia jurare [illegible] condemnatur, *vide* [illegible] [illegible] *Maſcard. de probat.* [illegible]

3\. [illegible]

[illegible] Google

[illegible] Vid. in com. opin. verb. teſtes affines Hect. Æmil. de [illegible] par. 113 p. 1. Farinac. de teſtib. d. [illegible] num. 1 [illegible] Videmus ex innata [illegible] qui ſæpe numero conſanguinei & affines [illegible] exemplo peſſimo inſidiantur [illegible] homicidiis, ne profugi dilabantur, vel ſi fugam capiant, [illegible] *W[illegible] de præſtig. dæmon. paſſim, Ioh. W[illegible] lect. memor. par.* [illegible] dum tantopere ſitiunt ſanguinem [illegible] humanum, [illegible] quoties ſaltem opus eſt verbis & [illegible] falſis, [illegible] bonis verbis, quam diris execrationibus vel ferro [illegible] & de numero mortalium exterminare reus, argumento a majori ad minus deducto, quod validum eſt, quo quæ in cauſis arduis, *Eberh. in top. in loc. à maj. ad min. us.*

4. [illegible] teſtes cogi poſſint ad teſtimonium dicendum ne veritas deſerta jaceat, [illegible] *extr. de teſtib. cogend.* [illegible] *de teſtib. tit.* [illegible] *quæſt.* [illegible] *num.* [illegible] ubi ex Hoſtienſi [illegible]. Quod niſi hæc [illegible] defendatur, Reſpublica lædatur, [illegible] corrumpatur, materia delinquendi præbeatur, [illegible] fugi [illegible] reus qui pœna affici debet, in malitia glorietur, [illegible] &c. [illegible] ille, nullus tamen dubium nec [illegible] ad ferenda teſtimonia, [illegible] neceſſitatem [illegible] *de teſtib.* [illegible] Sed quid multis [illegible] *de teſtib.* [illegible] *de probat.* [illegible] *ac Mal.* [illegible] *de teſtib.* [illegible] *[illegible] b. p. 5 num.* [illegible]

5. Adde, quod [illegible] in cauſis civili [illegible] teſtimonium [illegible] fidem, [illegible] *eadem gloſſ.* [illegible] ratio ſubornationis [illegible] quæ [illegible] ad [illegible] fidem [illegible] teſtimonii, [illegible] autem vulgo præſumunt [illegible] quippe [illegible] non prodit [illegible] unquam [illegible] nocebit reo, cui non [illegible] voto [illegible] de aperta [illegible] vel demen[illegible] *de epiſc. audient.* [illegible] enim [illegible] Contrariorum enim contraria eſt [illegible], *Eberhard. in top.* [illegible] Et hæc quoque ſunt decidendi argumenta, quibus [illegible] dubitandi rationum [illegible]

Ad 1. Reſp. Loqui Dd. citatos [illegible] evidentiori, textus enim [illegible] *de teſtib.* [illegible] cere ei geſtit re [illegible] legitimæ [illegible] palpare merito dixerim, [illegible]

quos non contradicentium livor abſorbebit, nec Aquilo [illegible] aerem diſperget, ſed quemadmodum veritas potentiſſima eſt, nec [illegible] admittit anfractus vel ambages, ita textus juris nulli interpretum [illegible] ne, limitatione, vel diſtorſione privata, mutari vel [illegible] poſſunt.

Ad 2. Reſp. Vagari Dd. limitiones ſine textibus, & uti [illegible] *d.loc.* authores, loqui eos ait de cauſa civili & [illegible] non [illegible] criminali, ubi teſtes requiruntur omni exceptione majores [illegible]

Reſp. ad 3. In delictis exceptis uti proditionis, Sodomiæ, [illegible] teſtes de jure communi reprobatos, deficientibus aliis probationibus [illegible] præſertim ubi difficultas probationis emergit, in cæteris [illegible] verò identidem haud obſervari nec jure receptum eſſe, [illegible] dubitationi [illegible] poſita.

Ad 4. Reſp. Quod nec [illegible] opinio fulciatur [illegible] Quinimo Dd. hanc ſententiam foventes expreſſe [illegible] nuis ſit [illegible] teſtem, utpote conſanguineum, ea ſupplenda [illegible] pluralitate, *Cara [illegible] nſil. 172 num. 22* [illegible] *Gabriel.* [illegible] *[illegible] num. 7. Carer. ſupra* [illegible] *de ind. & teſt. §* [illegible] [illegible] aptitudine cuncteſtis, *Roman. conſil 486.* [illegible] [illegible] 2. Quæ autem hic occurrat pluralitas [illegible] authoritas demonſtrabitur in reſponſo ſequenti, con [illegible] pitalis & horum ſimiliter, de quo quid judicandum [illegible] ſtabit &c.

Ad 5. Reſp. Per inficiationem: Etenim pro [illegible] criminalium rerum auriga, *Farinac. lib. 2. de opp. co* [illegible] Quod quoties caſu vel cauſa affines vel conſanguinei [illegible] miſſi fuerint nihil probent nec aliquam [illegible] fidem [illegible] reddit ille rationem hanc [illegible] Quia [illegible] [illegible]

[illegible]

[illegible]

diſtinguant inter capitale vel non capitale, publicum & privatum odium, *per cap. quoties ibi [illegible] de teſtib.* quod noſtrã hic ex omni aſſe confirmat ſententia, ſed utut ſit, eſſe non [illegible] inimicum ſed & odioſum repelli a teſtimonio in cauſa criminali res eſt extra omne dubium, *Gigner. in tr. de crim. leſ. majeſt. 2 rut. quomodo &c. quæſt.* [illegible] vigore, *text. c. inquiſitionis, extr. de accuſat. &c. a [illegible], & cap. teſtes, 3. q. 5* vide textum adamantinum & nervoſum, *l. 3. ibi [illegible] ei inimicus ſit adverſus quem teſtimonium fert, &c. ff. de teſtib.*

2. In tantum ut inimici repellantur quoq; in caſibus & criminalibus exceptis, ubi alias teſtes inhabiles admittuntur, denuò textus apertiſſimus, *in cap. per tuas, extr. de ſimon. Specul. de accuſ. §. 1. Hyppol. de Marſil. in l. 1. §. præterea, [illegible] ff. de qq. [illegible] 3 var. reſolut 12 de probat. delict. num. 14. Farinac. d. lib. [illegible] quæſt.* [illegible] *num.* [illegible] ibi: Si inimicus repellitur ab accuſando etiam in criminalibus exceptis, multò magis erit repellendus a teſtificando, cum præjudicium majus ſit ob majorem fidem, quæ datur teſti potius, quam accuſatori. Et in crimine blaſphemiæ, quod omnium atrociſſimum eſt, nec inimicos teſtes admitti voluit, *Grammat. conſil. 15. n. 12.*

3. Quinimò nec princeps ex plenitudine poteſtatis reſcribere poteſt, ut teſti inimico fides habeatur, *Par. ſ. conſil. 1. lib. 4. Menoch. de arb. qq.* [illegible] & planè teſtis inimicum agone conſtitutus & qui ſumpſit S. Eucharistiam, non eſt [illegible] *per [illegible] rejicitur ejus dictum, Hyppol. de Marſil. in l. 1. §. præterea, num.* [illegible] *ff. de qq. Roland. a Valle conſil. 24. n. 41. vol. 1.* & multi à Ddd. allegati authores qui hanc ſententiam unanimes tenuêre.

4. Præterea quanquam teſtes alias inepti & inhabiles, ut minimum indicia delictorum præbent, ut judex ad quæſtionem rigoroſam poſſit deſcendere per notiſſima, tanta tamen eſt inimici inhabilitas & imbecillitas, ut ne umbram fidei vel credulitatis inducat, *Marſil. conſil.* [illegible] *num.* [illegible] *Cravett. conſil. 9. n. 6 Bald. conſil. 46. lib. 24. Menoch de arb. qq. lib. 1 quæſt. 18. num.* [illegible] *Bertaz. conſil. 8. num. 44. Burſat. conſil. 2* [illegible] *lib. 1.* hinc inimici depoſitio nedum indicium ſuggerit ad inquirendum, *Boſſ. in tit. de crim. [illegible] inquiſit. n. 52. Farinac. præcitato loco,* ibi ampliat [illegible] inimicum repelli à teſtimonio ferendo, ut ſi pars citata ad videndum examinari teſtes opponit de inimicitia, offeratque ſeſe in continenti illam probaturum, differtur examen, nec teſtes recipiuntur niſi prius fuerit judicatum de inimicitia, quando cauſa eſt criminalis, &c.

5. Nec refert in præſentiarum etiamſi inimicitiæ cauſam dederit reus accuſatus, *Marſil. in l. 1. §. cum quæſtiones, ff. de qq.* a quâ nec recedendum eſſe in judiciis idem atteſtatur, *d. loc. Farinac. d. loc.* ubi nervoſe admodum & latè pertractat hanc teſtium repulſam, imò nec [illegible] utrum inimicitiæ cauſa ſit levis an gravis & profunda, [illegible] inimicitiam diffe-

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hendam non [illegible] an juſtæ vel injuſtæ præceſſerint [illegible], ſed an per [illegible] ſaltem ad [illegible] quis commotus fuerit, *cap.* [illegible] [illegible] ſuſpectus ſolummodò, vel præſumptus atteſtatur, [illegible] quicquam adfert cauſæ, *Bart. in l. 1. in fin. ff. de his quibus, ut indig.* [illegible] *1. §. preterea. num. 3. ff. de qq. Crot. de teſtib.* [illegible] *Bart.* [illegible] *Alexand. conſil. 99. lib. 1. Rimin. ſen. conſil.* [illegible] *4. num. 7. lib. 2.* [illegible] haud concinnat nec legitimat, ſiquidem [illegible] ſe non [illegible] ſed a-micum eſſe accuſati, qui tamen [illegible] nec dubium eſt, quin [illegible] teſtis putati ſub interrogatoriis [illegible] ſit amicus vel inimicus partium, & [illegible] refelli poſſit [illegible] à reo productis, in quibus ſi ſaltem cauſam [illegible] probat [illegible] pedita neque enim neceſſe habet demonſtrare [illegible] tiæ ſigna, quandoquidem inimicitia occulta [illegible] facitq; perinde teſtem ineptum uti aperta & [illegible] *[illegible] quoties, num. 3. de teſtib. Menoch. de arb. qq. lib. 1. quæſt.* [illegible] [illegible] eſt comparatum, quod [illegible] maium [illegible] majora dent damna quam illi qui [illegible] & [illegible] occulta pluſquam aperta ſoleat nocere incautis [illegible]

CAPUT XXXI.

DE EXAMINANDIS TESTIBUS

SUMMARIA.

1. [illegible]
2. [illegible]
3. [illegible]
4. [illegible]
5. [illegible]
6. [illegible]
7. [illegible]
8. [illegible]
9. [illegible]
10. [illegible]
11. [illegible]
12. [illegible]
13. [illegible]
14. [illegible]
15. [illegible]
16. [illegible]
17. [illegible]
18. [illegible]
19. [illegible]

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[illegible] impam, [illegible]

[illegible] D[illegible] [illegible] iu[illegible].

2[illegible]. [illegible] furti [illegible] index

2[illegible]. [illegible] mandata [illegible] res [illegible]

2[illegible]. [illegible] qualiter [illegible] ma[illegible].

[illegible] quos con[illegible] C[illegible]

2[illegible] [illegible] sententiam [illegible]

26 [illegible] ex erret in [illegible] ffic[illegible]?

27 [illegible] partim rationales [illegible] arum [illegible]

2[illegible]. [illegible] quando [illegible] in [illegible] crimi[illegible]na[illegible]

2[illegible]. [illegible] qualiter & quibus te[illegible] [illegible]

[illegible] in [illegible] ut [illegible]

[illegible]. Pa[illegible] pro[illegible] [illegible]

[illegible] A[illegible] in [illegible] criminali [illegible]

[illegible]. D[illegible] partim dignitatis est & mune[illegible] p[illegible]

3[illegible]. Pau[illegible] an [illegible] possit?

31. [illegible] pro se invicem non [illegible]tur

3[illegible]. [illegible] testis non est.

3[illegible]. [illegible]dax an testari possit in causa criminali.

3[illegible]. Calumniator an testari possit?

39. H[illegible] testari nequit.

4[illegible]. [illegible] abundus [illegible] possit?

41. [illegible] testis?

42. A[illegible] testis?

43. [illegible] pro- lixius traditur.

ANne [illegible] expeditis proximum est & consequens, ut reus exci[illegible] exceptionesque [illegible] probet. Reus † enim excipiendo fit [illegible] † [illegible] negativa fuerit. *l. 1. ff. de except. l. 7 [illegible]* 2 *[illegible] prob. Schurff [illegible]* . ubi dicit. exce- [illegible] probare debere, [illegible] exceptionem, *Cravett. consil. 26. num.* [illegible] De [illegible] probare debeat docet, *Const. Carol. V. art.* [illegible] & quid in hoc disponit, ut si quidem inhibitis [illegible] accusator [illegible] & designatione loco 3 [illegible] petere commissionem de- [illegible] multa per [illegible] refert Commissa- [illegible] † officium [illegible] per No- 4 tarius scribi & diligenter [illegible] observans † [illegible] 49. [illegible] *Alexand.* [illegible] Notarii, [illegible]

Pa[illegible]

Porrò diſponitur *in Conſt. art.* 72. ut ſiquidem ex [illegible] judex idoneum conſtituere queat Commiſſarium, qualiter [illegible]
7 ſit, quoniam † regulariter receptio teſtium com[illegible] debeat, [illegible] *apud.c de fide inſtrum.* dicitur autem in Conſtitutione, ut [illegible] ſtratus illius ſubſidium, ſub cujus juriſdictione teſtes degunt [illegible] ſionem recipiat & expediat, *de articul.* 22 ibi: Dieweil aber an [illegible] Kundſchafft Verhörung viel gelegen, quo in caſu articuli ſuper quibus teſtes examinari debent, una cum commiſſione, Commiſſario tranſmitti [illegible]
8 qui † poſtea partem adverſam ad dandum ſua interrogatoria [illegible] [illegible] jurare teſtes, præterea ipſos teſtes, [illegible] [illegible] & de legitima citatione ejusque executione facta [illegible] tenetur, *de art.* 72. *cap.* 2. *de teſt. l. ſi quando, cap. de teſt.* [illegible] cens teſtes ad videndum recipi & jurare, teſtes [illegible] teſtes jurare & examinare debet, *cap.* [illegible] *de teſt. ubi* [illegible] cens exhibet directorium [illegible] vel illos teſtes examinare deſideret, *gloſſ. in c.* 2 *de teſt.* [illegible] ſa citata ad videndum jurare teſtes, ex [illegible] examinari [illegible] nequeat, inde fides [illegible] Commiſſario [illegible] neceſſe ea poſſit: niſi enim ita procedat, teſtium receptio [illegible] nullius eſt momenti. *Dd. in* [illegible] *quæſitum,* [illegible] *de teſtib.*

Examinatis rectè & [illegible] teſtibus [illegible] Commiſſarius [illegible] ſub [illegible] probe obſignatum [illegible] *de teſt.* [illegible] *§ fin. de* [illegible] *ab* [illegible] ad partium inſtantiam atteſtationum publicatio fieri ſolet, [illegible] *clamer.*

9 Sed cujus † ſumptibus commiſſio [illegible] cauſa [illegible] dubium non eſt, quin producentis [illegible] ri debeat *l. quoniam, cap. de teſt.* [illegible] §. [illegible] *de app.* [illegible]
10 [illegible] *§ inſuper, de reſcript. in* 6. [illegible] tenetur, cujus gratia [illegible] *l. ſed* [illegible] criminal[illegible] res [illegible] *de* [illegible] Kſten der Partheyen [illegible] ſiliis [illegible] partium [illegible] *de* [illegible] Es [illegible] tatis videtur, ut [illegible] quoque ſumptus [illegible] & [illegible]
11 adminiſtratione, [illegible] [illegible]

[illegible]

trocinium † adverſus hoſtes, pyratas, prædones, ſubinde promittendo, cujus patrocinii potior pars parcere ſubjectis & debellare ſuperbos, qui in parte ſumptibus propriis non litigantium inopiis certare jure tenetur. At hodierno ſeculo, ut de moleſtis hunc ſermonem incidentem abrumpamus, criminaliſtæ longe aliter agunt, lætantur quippe & exultant, quoties burſa fulvis miſerorũ mulctis turget, impiè dicentes. Es habe diß Jahr an Brüchen / die Geld Büchſe / (Gott ſey Lob und Danck) ein Ehrliches ertragen / quaſi Deus gaudeat & applaudat ejuſmodi peccatis & hominum malitiis, quorum author & caput Diabolus eſt. Et [illegible] † exceſſivæ & illicitæ limitum criminalium 13
mulctæ, nullo jure comprobantur. *[illegible] part.1.com.op.pag. 116. Roland. a Valle conſil 4. [illegible] vol.4.* imò crudelis & ſevera eſt omnis mulcta. *Alexand. conſil.216.volum.2.* Quapropter non blandiatur ſed irritatur præfectus, ſi regiſtra mulctis litium criminalium [illegible] videat, quamvis eo devenerum ſit hodie, ut ejuſmodi mulctarum compendia cenſeantur optimi fructus juriſdictionis, ut experientia abunde id conteſtatur.

Cæterum teſtibus † examinatis & commiſſione rite expedita, cum 14
ad partium inſtantiam atteſtationes publicare vult judex vel ejus Commiſſarius, citare ad id debet partes, publicatis verò atteſtationibus, copiam earum communicare & edere debet partibus & diem ſeu terminum non adeo angustum præfigere, quo partes ſe informent ſufficienter ad excipiendum vel reſpectivè ſubdiendum id, quod in atteſtationib. continetur. Interea † quoque 15
judex prohibere nõ debet, ne conjuncti & amici reorum ſæpius eos viſitent, atque de impugnatione rotuli cum ipſis deliberent. Poſt hæc † duobus hinc 16
inde ſcriptis cauſa concludatur. [illegible] ex parte rei graviſſimæ [illegible] emergerent [illegible] di cauſæ, quæ aliam fortè deſiderarent adhuc ſcripturam vel deductionem cauſæ ulteriorem, quo caſu tandem ſcripta ulteriora hinc inde admitti [illegible] *Const. Crim. art. 71. Clar. quæſt. 4[illegible]* quamquam regula ſit, quod in cauſa criminali nunquam [illegible], quoad partes, ſit. *[illegible] obſ.1[illegible]. Mynſing. cent. 4. obſ. 52.* ut ſit ſententia [illegible] conclusa, quod ſit nullo in cauſa criminali [illegible] legitimo, ne publicatis atteſtationibus [illegible] bona admittantur in illo [illegible]. *[illegible] Denaiſ. [illegible]*

[illegible] † ſi reus delictum quidem non inficiatur, veruntamen [illegible] 17
do allegaret cauſas [illegible] quæ veriſimiles [illegible] viderentur, conſtituitur *in d. Ord. [illegible]* [illegible] er dem als offentlich gemeinſam [illegible] / ſo ſolt er nicht [illegible] der [illegible] noch [illegible] Peinlich frage verurtheilet werden. Atque hoc † in [illegible] eſt pro accuſatore, ut 18
quoties reus exceptiones [illegible] probare nititur, ſubeunte verò proceſſum probatum, ſibi caveri faciat de expenſis [illegible] probatione [illegible] ceſſatus. Qua in parte à propinquis & amicis [illegible]

[illegible]

16 [illegible]nones † eſſe triplicis generis. Primi generis [illegible] fidem & doctrinam, quam [illegible] Deo [illegible] & [illegible] ſive per univerſalia ſive per provincialia concilia & ſynodos [illegible] tum obſervandi, in quantum à fonte divino non recedunt [illegible] Seculari quàm Eccleſiaſtico, [illegible] Nec porro [illegible] quod aperte diſtinguit inter jus canonicum & civile [illegible] paſſim poſſint de juris humani rigore compelli. Et quod [illegible] *per* [illegible] *8. eodem tit.* decidit & [illegible] commovendum [illegible] [illegible] qui nominati fuerint, perhibere teſtimonium veritati [illegible] [illegible] ſubjecta, & quicquid de inimicitia capitali, [illegible] adſ[illegible], hæc ratio frivola eſt & admodum generalis. [illegible] evacuarentur probationes in genere, illuderetur S. [illegible] demum omnes fuſcæ in viduitate, ſed [illegible] ratio per [illegible]
17 [illegible]ditur, attendi non debet, argumentum † verò à [illegible] ſcandali, vel inconvenientis depromtum in jure validum eſt & efficax, [illegible]
18 *[illegible] top. in loc. ab abſurd.* Sed quando † teſtes inv[illegible] [illegible] quam [illegible] ſupra diximus [illegible] teſtes, [illegible] *num* [illegible] poſſe, ait idem [illegible] pœna pecuniaria, *num.* [illegible] ubi ait: Quod erudit Commiſſarii [illegible] ſolent teſtes ad certum locum & tempus, [illegible] teſtes ſub pœna pecuniaria, [illegible] quam durante contumacia per Commiſſarium decla-
19 rari. Commiſſarii † [illegible] committentis, [illegible] *cap.* [illegible] *Clem. 2. de off.* [illegible] *§. fin. ff. de off.* [illegible] quam ad [illegible] publicationis bonorum uſque extendi [illegible]
20 [illegible] alii † contumacem teſtem in bannum declarari [illegible] [illegible] contumacem reum. *Angel. de Perus.* [illegible] [illegible] poſteriores [illegible] teſtes. *Bart. & Od.* [illegible] [illegible] ex [illegible]
21 [illegible] emancipetur, *Bart.* [illegible] *ff. de falſ.* [illegible] procedendum [illegible]
22 [illegible] crimine falſi. Teſtis † [illegible] contumaciam, [illegible] *ſupra.* Nec dubium eſt, quin judex [illegible]
23 [illegible] quam adverſarius [illegible] vel † [illegible] contumaciam & contemptum [illegible] [illegible] neque [illegible]
24 † [illegible] auctoritatem [illegible]
25 [illegible] *ff. de off.* [illegible]

An

An conſanguineus vel affinis defuncti de cujus morte vindicando agitur, vel num inimicus accuſati, poſſit teſtari in cauſa homicidii?

1. Quod conjunctos attinet, illi videntur ex omni aſſe admittendi ad dicendum teſtimonium, *Bart. in l. [illegible], nu. 5. C. de teſtib. Boſſ. in tract. crim. in tit. de oppoſit. contr. teſtes, n. 110 [illegible] & 139. [illegible] in com. opin. verbo teſtes, affines. [illegible] Meno. li. de arbit. jud. qq. lib. 2. caſ. 124. [illegible] Æmil. de teſtib. p. 1. verb. teſtis, num. 16. &c.* quam ſententiam veriſſimam eſſe & in opinionem communem tranſiiſſe refert & teſtatur, *[illegible] in c. [illegible] ext. ut lite non [illegible] &c.*

2. [illegible] hanc opinionem uti certiſſimam approbat & multis rationibus ſuffulcit, *Alb. de Roſat. de teſt. p. 1. c. 1. pag. 48. Ægid. Boſſ. d. l. loc.* ubi inducit patruum pro nepote efficaciter teſtificante, nec non conſobrinum pro conſobrino teſtimonium ferente, *Hector. Æmil. d. [illegible] in [illegible] affinem pro affine.* Quidni ergo in [illegible] conſanguineus pro conſanguineo? Parium ſane idem eſt judicium, *[illegible] in top. in loc. à pari,* infirmitas quippe eſt intellectus, de ſimilibus quærere legem, *Conrad. Lag. part. 1. jur. Civil. cap. 24. [illegible] contr. Inſt. 21. num. 12.*

3. Accedit, quod ſi qua fides juxta DD. nonnullos ſubtrahatur conſanguineis teſtificantibus [illegible], *[illegible] d. l. loc.* ea tamen cumprimis [illegible] nequaquam [illegible] debilitetur, cum verſatur quæſtio in materia difficilioris probationis, qua in re teſtes inhabiles & parum idonei regulariter admittuntur, *[illegible] de Malet. in tract. de teſtib. cap. 6. numer. 18.* Sed caſus noſter [illegible] eſt comparatus, ut [illegible] non poteſt haberi [illegible] omni exceptione [illegible]. Ergo inhabiles in ſubſidium admittentur, nempe ne veritas ſubvertatur, *c. [illegible], 2. quæſt. 4.* & per inopiam probationum rei dimittantur. Reipublicæ enim intereſt, ut delinquentes puniantur, & [illegible] *lib. [illegible] de [illegible] præſid.* [illegible] quæ [illegible] evadunt impuniti, *l. 3. Cod. de [illegible].* [illegible] poſſe conſanguineos ad teſtificandum refert & docet, *[illegible] in l. [illegible] Julia, Cod. de teſtib. Gomez. [illegible] 13. rub. de probat. d. l. n. 24. Maſcard. de probat. [illegible] lib. 2.*

4. Ponderandum eſt, quod atteſtatio conſanguinei vel affinis [illegible] debilis [illegible] pro ſe [illegible] contradictionem, vel inhabilitatis exceptionem, [illegible] plenam inducat probationem, [illegible] teſtimonium teſtis alterius [illegible] ſupplent atteſtationem, *Maſcard. de prob. 1. concl. [illegible]. Co[illegible] n. [illegible] 2. n. 22. lib. 2.* A[illegible] conſanguineus conteſtem extraneum habet, qui [illegible] videtur & omni exceptione major. Ergo.

5. Idq; tanto fortius, [illegible] quod ab initio & ſub ingreſſu examinis teſtium, accuſatus non exceperit adverſus perſonam teſtis. [illegible] enim [illegible] eſt, quod [illegible] teſto, ſic tacito partium conſenſu habilitentur

conſanguinei, *Aufrer. de reprob. teſt. num. 25. verſ. 4.* [illegible] *concl. 4* [illegible] *num. 19.* a quâ doctrinâ nunquam [illegible] *Gabriel. d. concl. 1* [illegible] *num. 1* [illegible] *in rub. de teſtib. vide Farin. de teſt.* [illegible] *14. num.* [illegible] 1.

Sed hæc ſunt dubitandi argumenta [illegible] decidendi [illegible] ſubjungemus, & [illegible] ad argumenta dubitativa reſponſiones.

[illegible] & inſuperabile ſuppeditat pro [illegible] *in princ. ibi vel amicus,* [illegible] *de teſtib.* [illegible] *ſimiliter quæſt.* [illegible] accuſator affinis adm[illegible] teſtis, *Spec.* [illegible] *§.* [illegible] *num. 14 Bald. conſil.* [illegible] *volum. 2. Alex.* [illegible] & plurimi à Dd. citati, quos partim quoque allegat *Farinac.* [illegible] regula itaque in primo hujus quæſtionis capite [illegible] comprobata [illegible] patet, quod conjuncti per affinitatem vel conſanguinitatem, [illegible] idonei teſtes, [illegible] examinati non faciunt legitimam [illegible] bationem, *per text. in d. c. ſimiliter, 3. quæſt.* [illegible] *& c.* [illegible] 1. 7. 9. [illegible] nei & affines teſtes reprob[illegible] *cul. de teſtib. d. l.* [illegible] *Montic.* [illegible] *in verbo* [illegible] [illegible] *plures ab eodem citati* [illegible] *d. c. ſimiliter.* [illegible] tcio teneantur repellere teſtes conſanguineos & affines, [illegible] ticente, [illegible] judicia ſanguine humano [illegible] primat [illegible] teſtimonio falſorum teſtium, *vide Maſcard.* [illegible]

2. Adde quod quanquam [illegible] rum, nec non [illegible] peculiaria teneat jura & privilegia, [illegible] [illegible] Fiſcali, nec Reipublicæ agenti extra [illegible] gratur, *Bald.* [illegible] *numer. 4. C. ſi advers. libert.* [illegible] eit [illegible] hoc in [illegible] ſeſe [illegible] qui ſiquidem probare [illegible] teſtimonio [illegible] affinium [illegible] debet probare copiam [illegible] [illegible] *Bart.* [illegible] *juris* [illegible] *per* [illegible] *de* [illegible] *de teſtib. num.* [illegible] *Alber.* [illegible] quam concluſionem ab omnibus [illegible] *de teſtib. num. 11. Corn. conſil.* [illegible] [illegible] Fiſcali de calumnia [illegible] condemnatur, *vide* [illegible] [illegible] fidem [illegible] *Maſcard. de probat.* [illegible]

3. [illegible] probationem [illegible] [illegible]

[illegible] n. [illegible] opin, verb. teſtes affines. Hett. Æmil. de [illegible] pag. 113 p. 1. Farinac. de teſtib. d. lo. num. [illegible] Videmus ex innata [illegible] humero conſanguinei & affines incantationibus exemplo peſſimo inſidiantur cædis [illegible] vel homicidii, ne profugi dilabantur, vel ſi fugam captarent, ilico redire cogantur, qua de re *W*[illegible] *preſtig. dæmon. paſſim, Ioh. Wolf.* [illegible] *lect. memor. pag.* [illegible] illos [illegible] dum tantopere ſitiunt ſanguinem [illegible], [illegible] vitæ & ſanguinis reorum quoties ſaltem opus eſt verbis & atteſtationibus falſis, [illegible] bonis verbis, quam diris execrationibus [illegible] & [illegible] mortalium exterminare [illegible] argumento a majori ad minus deducto, quod validum eſt quoque in cauſis arduis, *Eberh.* [illegible] *top. in loc. à maj. ad minus.*

4. [illegible] teſtes cogi poſſint ad teſtimonium [illegible] endam e veritate [illegible] *ubi Innoc.* [illegible] *m. 1. extr. de teſtib. cogend.* [illegible] *de teſtib. tit.* [illegible] *c.* [illegible] *num.* [illegible] ubi ex Hoſtienſi ait: [illegible] Deus offendatur, Reſpublica [illegible], proximus corrumpatur, materia delinquendi præbeatur [illegible] utrinque [illegible] fruges ſeminator [illegible] pœna [illegible] bet, in malitia glorietur, [illegible] cos abſolvatur, [illegible] condemnetur, &c. [illegible] ille, nullus tamen dubito, [illegible] eſt in [illegible] affines & conſanguineos cogi poſſe ad ferenda teſtimonia, imò [illegible] [illegible] neceſſitatem [illegible] *d.* Sed quid [illegible] *4.* [illegible] *c.* [illegible] *de probat.* [illegible] *de* [illegible] *ſtib. p. 3. num.* [illegible]

5. A [illegible] teſtimonium conſanguinei plenam inferat fidem [illegible] *4.* [illegible] *ibus & eadem gloſſ.* [illegible] ratio ſubornationis [illegible] quæ non [illegible] teſtimonium [illegible] vulgo præſumitur, conſanguineus quippe per cæcam affectus [illegible] non prodit [illegible] nemo unquam [illegible] reo, [illegible] volo [illegible] de aperta [illegible] dementia [illegible] *epiſc. audient.* [illegible] enim [illegible] Conſanguineum enim [illegible], *Eberhard. in top.* [illegible] Et hæc quoque ſunt decidendi argumenta, quibus [illegible] rationum [illegible].

Ad 1. Reſp. Legum Dd. citatos [illegible] evidentior, textus enim *l.* [illegible] *de teſtib.* [illegible] cere ei geſtit reluctari [illegible] ſalvare merito dixerim, [illegible] & [illegible]

quos non contradicentium livor abſorbebit, nec Aquilo [illegible] & in aerem diſperget, ſed quemadmodum veritas [illegible] ſe- mittit anfractus vel ambages, ita textus juris nulla [illegible] ne, limitatione, vel diſtorſione privata, mutari vel tranſponi poſſunt.

Ad 2. Reſp. Vagari Dd. ſimiliter ſine textibus, & [illegible] *cius d. loc.* authores, loqui eos ait de cauſa civili & [illegible] minali, ubi teſtes requiruntur omni exceptione majores per [illegible].

Reſp. ad 3. In delictis exceptis [illegible] proditionis [illegible] ſtes de jure communi reprobatos deficientibus aliis probationibus [illegible], præſertim ubi difficultas probationis emergit, in cæteris [illegible] verò identidem haud obſervari nec jure receptum eſſe, [illegible] dubitationis aleam poſita.

Ad 4. Reſp. Quod nec hæc opinio fulciatur ſolide juris fundamento [illegible] Quinimo Dd. hanc ſententiam foventes expreſſe addunt [illegible] nus ſit penes teſtem, utpote conſanguineum, ea ſuppleatur [illegible] pluralitate, *C* [illegible] *conſil. 172. num. 2. volum.* [illegible] *Gabriel. de teſt.* [illegible] *& cautel. 11. num.* [illegible] *Carer. in pract. crim. de ind. & tort. § fin.* [illegible] Vel aliquo aptio aliquo contextis, *Roman. conſil. 48.* [illegible] *Maſcard.* [illegible] *concl.* [illegible]. Quæ autem hic occurrat pluralitas [illegible] authoritas demonſtrabitur in reſponſo ſequenti, [illegible] pitalis & homo ſuſpectus, de quo quid judicandum [illegible] ſtabit &c.

Ad 5. Reſp. Per inficiationem: Etenim pro regula [illegible] criminalium rerum auriga *Farinac. lib. 2. de opp. contra teſtes tit.* [illegible] Quod quis in caſu vel cauſa affines vel conſanguinei non ſint [illegible] muli [illegible] nihil probent nec aliquam [illegible] reddit ille rationem hanc [illegible] Quia factum [illegible] ſanguinis, quod [illegible] habet, [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

diſtinguant ſi [illegible] capitale vel non capitale, publicum & privatum [illegible], *per cap. quoties ib. [illegible] de teſtib.* quod noſtrâ hic ex omni a[illegible] [illegible] ſententia, ſed [illegible] ut [illegible] teſtem non [illegible] inimicum ſed & odioſum repelli à teſtimonio in cauſa criminali res eſt extra omne dubium, *Gigner. in tr. de crim. læſ. majeſt. 2 rut. qu[illegible] &c. quæſt. [illegible] n. 10.* vigore, *text. c. inquiſitionis, extr. de accuſat. &c. [illegible] cap. [illegible] 3. q. 5.* vide textum adamantinum & ner[illegible] [illegible], *l. 3. ibi: vel an ei inimicus ſit adverſus quem teſtimonium fert, &c. ff. de teſtib.*

2. In tantum ut inimici repellantur quoq; in caſibus & criminalibus exceptis, ubi alias teſtes inhabiles admittuntur, denuò textus apertiſſimus, *in cap. per tuas, extr. de ſim[illegible] & ſpecul. de accuſ. § 1. Hyppol. de Marſil. in l. 1. §. præterea, in princ. ff. de qq. [illegible] 3 [illegible] reſolut. 32 de probat. delict. num. 14. Farin[illegible] d. lib. [illegible] quæſt. [illegible] num. [illegible]* ibi: Si inimicus repellitur ab accuſando etiam in criminalibus exceptis, multò magis erit repellendus à teſtificando, cum [illegible] majus ſit ob majorem fidem, quæ datur teſti potius, [illegible]. Et in crimine blaſphemiæ, quod omnium atrociſſimum eſt, nec inimicos teſtes admitti voluit, *Grammat. conſil. 15. n. 12.*

3. [illegible] nec princeps ex plenitudine poteſtatis reſcribere poteſt, ut teſti inimico fides habeatur, *Pariſ. conſil. 2. lib. 4. Menoch. de arb. [illegible]* [illegible] teſtis inimicus [illegible] conſtitutus & qui ſumpſit S. Euchariſtiam, non eſt [illegible] idoneus *ſed pro [illegible] eius dictum, Hyppol. de Marſil. in l. 1. §. præterea, num. [illegible] ff. de qq. Roland. à Valle conſil. 24.* [illegible] & multi alii [illegible] ſententiam unanimes tenuêre.

4. Præterea quanquam teſtes alias inepti & inhabiles, ut [illegible] indicia delictorum præbent, ut judex ad quæſtionem rigoroſam poſſit deſcendere per [illegible] tamen eſt inimici [illegible] & [illegible] ne umbram fidei vel credulitatis inducat, *Marſil. conſil. [illegible] num. [illegible] Cravett. conſil. 9. n. 6. Bald. conſil. 16. lib. 2. 4. Menoch. de arb. qq. lib. 1 quæſt. 2[illegible]. num. [illegible] Bertaz. conſil. [illegible] num. [illegible] 4. Berſat. conſil. 2[illegible]. lib. 1.* hinc [illegible] depoſitio nedum judicium ſuggerit ad inquirendum, *Baiſ. in tr. crim. de inquiſit. n. [illegible] 2. Farin. pracitato loco,* [illegible]. In tantum, [illegible] repelli à teſtimonio [illegible] pars [illegible] ad videndum examinari teſtes opponat de inimicitia, [illegible] continent illam probatorum [illegible] ex[illegible] nec [illegible] recipiuntur [illegible] prius fuerit judicatum de inimicitia, quando cauſa eſt criminalis, &c.

5. Nec refert in [illegible] cauſam de ſede rei accuſatis, *Marſil. in l. 1. § [illegible] ff. de qq.* [illegible] quâ nec [illegible] eſſe in judiciis [illegible], *d. lo. Farinac. d. loc.* [illegible] & [illegible] hanc teſtium repulſam, imò [illegible] cauſa ſit levis an gravis & probabilis, quia ad [illegible] hen-

hendam non a[illegible]ditur an juſtæ vel injuſtæ præceſſerint cauſæ, ſed an per cauſam ſaltem a[illegible] quis commotus fuerit, *cap. 23. q. 5.* planè ſin[illegible] inſpectus ſolummodò, vel præſumptus atteſtatur, nihil efficit [illegible] quicquam adfert cauſæ *Bart. in l. 1. [illegible] quibus, ut indig. [illegible] 1. §. præterea. num. 3. [illegible] de qq. Crot. d. teſtib. [illegible] 18. p. 2. Bart. [illegible] Alexand. conſ. 99. lib. 1. Riminald. conſ. 84. num. [illegible] lib. 2.* teſtem quoque haud concinnat nec legitimat, ſi quidem [illegible] ſe non inimicum [illegible] amicum eſſe accuſati, qui tamen re[illegible] talis [illegible] nec dubium [illegible] teſtis juratus ſub interrogatoriis [illegible] ſit amicus vel inimicus partium, &c. [illegible] refelli poſſit [illegible] rius à reo productis, in quibus ſi ſaltem cauſam [illegible] pedita neque enim neceſſe habet demonſtra[illegible] ancorem & [illegible] tiæ ſigna, quandoquidem inimicitia occulta [illegible] faciatq; perinde teſtem ineptum uti aperta & [illegible] *[illegible] quoties, num. 5. de teſtib. Menoch. de arb. qq. lib. 1. quæſt. [illegible]* [illegible] eſſe comp[illegible] quod uti ſcopuli marini [illegible] bus majora dant damna quam illi qui eminent [illegible] tia occulta pluſquam aperta ſoleat nocere incautis [illegible]

CAPUT XXXI

DE EXAMINANDIS TESTIBUS

SUMMARIA

1. R[illegible] actor.
2. Exceptiones [illegible] probari debent.
3. A[illegible] articulos [illegible] dati.
4. Examinator teſtium [illegible]
5. [illegible]
6. [illegible]
7. [illegible]
8. [illegible]
9. [illegible]
10. [illegible]
11. [illegible]
12. [illegible]
13. [illegible]
14. [illegible]
15. [illegible]
16. [illegible]
17. [illegible]
18. [illegible]
19. [illegible]

[illegible] Confessionem [illegible] ſimpliciter, [illegible]

[illegible]

11. *Damnatur [illegible] juris [illegible] arreſtationes.*

1[illegible]. *[illegible] mandata [illegible] dum [illegible] reſ[illegible] valere [illegible]*

1[illegible]. *[illegible] Canonico [illegible] [illegible] magiſtratu.*

1[illegible]. *Damnantur aliquot conſuetudines in [illegible]*

2[illegible]. *[illegible] ſententiam [illegible]*

26 *Quid ſi [illegible] ſex erret in officio?*

27 *Variæ [illegible] tam barbaræ, quam partim rationales [illegible]*

2[illegible]. *Minor quando [illegible] in cauſa criminali.*

2[illegible]. *[illegible] an qualiter & quibus teſtibus probetur.*

3[illegible]. *[illegible] partim [illegible] muneris [illegible]*

31. *Patrinus an teſtari poſſit [illegible]*

32 *Adulter, perjurus, teſtes non ſunt in cauſa criminali idonei.*

3[illegible]. *[illegible] teſtimonium partim dignitatis eſt & muneris publici.*

3[illegible]. *Pauper an teſtari poſſit?*

3[illegible]. *Vir & uxor adverſus ſe vel pro ſe invicem non [illegible]antur.*

36. *Perjurus teſtis non eſt.*

37. *[illegible]ndax an teſtari poſſit in cauſa criminali.*

38. *Calumniator an teſtari poſſit?*

39 *[illegible]*

40. *[illegible] poſſit?*

41. *[illegible]*

42. *An [illegible]*

43. *[illegible] prolixus traditur.*

ANteactis hiſce ita expeditis proximum eſt & conſequens, ut reus [illegible] plus [illegible] probet. Reus † [illegible] actor [illegible] † [illegible] *l. [illegible] ff. de except. l. [illegible]* 2
[illegible] ff. de prob. Schurpf. [illegible] [illegible] probari debere, [illegible] fundamentum [illegible] adeo [illegible] excepiſſe dicatur [illegible] exceptionem, *Cravett. conſil. 26[illegible] num. [illegible]*. De [illegible] quomodo [illegible] probare debeat, docet *Conſt. Carol. V. art. [illegible]* & [illegible] hoc diſponit, ut ſiquidem [illegible], quod probare [illegible] inſtituit accuſator † [illegible] & deſignatione loco- 3
rum [illegible] teſtes [illegible], petens commiſſionem decerni in [illegible] forma [illegible] multa parte [illegible] *[illegible] lib. [illegible] 4. [illegible] 2.* ubi refert Commiſſarii † officium [illegible] ut ſingula teſtium dicta per No- 4
tarios ſcribi & diligenter [illegible] obſervans † [illegible] ſermones re[illegible], *art. [illegible] num. 4[illegible]. de prob. [illegible]* [illegible] *lib.* 5. Quo[illegible] † [illegible] debet. Nam [illegible] eſt, quod dictum teſti[illegible] non poſſit [illegible] verbis [illegible] Notarii referētis Tamen hoc vel [illegible] fuerit comprehenſum, [illegible] eſt.

Porrò

Porro diſponitur *in Conſt. art.* 72. ut ſiquidem ex [illegible] judex idoneum conſtituere queat Commiſſarium, qualiter procedendum
7 ſit, quoniam † regulariter receptio teſtium committi non debeat, [illegible] *apud. c de fide inſtrum.* dicitur autem in Conſtitutione, ut imploretur magiſtratus illius ſubſidium, ſub cujus juriſdictione teſtes degunt, ut [illegible] commiſſionem recipiat & expediat, *de articul.* 22 ibi: Dieweil aber an [illegible] Kundſchafft-Verhörung viel gelegen: quo in caſu articuli ſuper quibus [illegible] examinari debent, una cum commiſſione, Commiſſario tranſmittendi ſunt,
8 qui † poſtea partem adverſam ad dandum [illegible] interrogatoria [illegible] ad videndum jurare teſtes, præterea ipſos teſtes, ut teſtimonium perhibendum citare & de legitima citatione ejusque executione [illegible] apud acta [illegible] tenetur, *de art.* 72. *cap.* 2. *de teſt. l. ſi quando, cap. de teſt.* [illegible] cens teſtes ad videndum recipi & jurare, teſtes [illegible] teſtes jurare & examinare debet, *cap.* [illegible] *de teſt.* [illegible] ceps exhibet directorium ſive deſignationem [illegible] vel illos teſtes examinare deſideret, [illegible] *de teſt.* [illegible] ſi citata ad videndum jurare teſtes, ex [illegible] examini teſtium nequeat, inde fides hac Commiſſario [illegible] ca poſſit: niſi enim ita procedat, teſtium receptio & teſtimonium nullius eſt momenti. *Dd. in* [illegible] *quæſitum,* [illegible] *de re jud.*

Examinatis recte & ſigillatim teſtibus [illegible] Commiſſarius [illegible] ſub ſigillo ſuo probe obſignatum [illegible] *de* [illegible] *. §. fin. de* [illegible] *l. cum ab* [illegible] *quam.* [illegible] demum ad partium inſtantiam [illegible] publicatio fieri ſolet, [illegible] *clamor.*

9 Sed cujus † ſumptibus commiſſio hujuſmodi expediri debet? In cauſa civili [illegible]
[illegible] *cap. de teſt.* [illegible] *§.* [illegible]
10 *de.* [illegible] *de reſcript.* [illegible]
[illegible] celebratur [illegible]
criminali res ſeſe [illegible] *de Conſtit. art.* [illegible]
oder Koſten der [illegible] pro con-
[illegible]
[illegible] *de Conſt. art.* [illegible] ibi: Es [illegible]
[illegible]
[illegible]
11 [illegible]
[illegible]
[illegible]
[illegible]

[illegible] † adverſus hoſtes, pyratas, prædones, ſubinde [illegible], cu- 12
jus patro[cin]ij potior pars parcere ſubjectis & debellare ſuperbos, [illegible] par-
te ſumptibus propriis, non litigantium [illegible] certare jure tenetur. At ho-
dierno ſeculo, ut de multis hic [illegible] incidentem abrumpamus, cri[min]-
aliſtæ longè aliter agunt, lætantur quippe & exultant, quoties burſa fulvis
miſerorū mulctis turget, impiè dicentes: Es habe diß Jahr an Brüchen / die
Geld Büchſe (Gott ſey Lob und Danck) ein Ehrliches ertragen / quaſi Deus
[gau]deat & applaudet ejuſmodi peccatis & hominum malitiis, quorum author
& caput Diabolus eſt. Et [illegible] † exceſſivæ & illicitæ litium criminalium 13
mulctæ, nullo jure comprobantur, *[illegible] part. 1. c. [illegible] p. pag. 116. Roland.
à Valle conſil. 49. vol. 4.* [illegible] crudelis & ſevera eſt omnis mulcta, *Alexand. con-
ſil. 216. volum. 2.* Quapropter non [illegible] præfectis, ſi regiſtra
mulctis litium criminalium [illegible] videret, [illegible]
hodie, ut ejuſmodi mulctarum [illegible] optimi fructus juriſ-
dictionis, ut experientia abunde id [illegible].

Cæterùm [illegible] † examinatis & commiſſione rite expedita, [illegible] 14
ad partium inſtantiam atteſtationes publicare [illegible] Commiſſa-
rius, citare ad id debet partes, publicatis verò atteſtationibus, copiam earum
communicare & edere debet partibus & [illegible] terminum non [illegible]
[illegible] præfigere, quo partes ſe [illegible] ſufficienter ad excipiendum vel
reſpective ſtabiliendum id, quod in atteſtationibus continetur. Interea † [illegible] 15
judex prohibere nō debet, ne conjuncti & amici reorum ſæpius eos [illegible],
atque de impugnatione rotuli cum ipſis deliberent. Poſt hæc † [illegible] 16
inde ſcriptis cauſa concludatur. [illegible] ex parte rei [illegible]
emergerent defendendi cauſæ, quæ aliam forte [illegible]
[illegible] cauſæ ulteriorem, quo [illegible]
hinc inde admitt[illegible] *Conſt. Crim. art. 71. Clar. quæſt. 4[illegible]* [illegible]
quam regula ſit, quod in cauſa criminali nunquam concluſio [illegible]
[illegible] *1. obſ. 10[illegible]. Mynſing. cent. 4. obſ. 52.* ut ſi ſententia abſq; prævia con-
cluſione lata, non ſit nulla in cauſa civili, idem conſiliorum [illegible] publi-
[illegible] admiramur in illo puncto. *Pet. Dewin.*
[illegible] Cam. 1. 92 § 1.

Cæterùm † [illegible] quidem non [illegible], reum excipien- 17
do alligari [illegible] que [illegible] relevare reum [illegible] con-
ſtitui [illegible] *Ordinat.* [illegible] Dann er ſolt als [illegible] Actionſam [illegible]
ſo ſolt er nicht [illegible] der [illegible] Unſchuldt noch ohn einig Peinlich
frage [illegible] werden. Atque hoc † [illegible] cautela eſt pro accuſatore, ut, ſi 18
quoties reus exceptio[illegible] probare nititur, ſubinde et verò proceſſum [illegible]
[illegible], ſibi caveri faciat de expenſis litis, ſiquidem in probatione [illegible]
[illegible]. Quam parte à propinquis & amicis [illegible] judex

cauſæ

cauſæ Criminalis. Daß deſſen ſolche fürgewendte Entſchuldigung deß Be- klagten in der Außführung mit Recht nicht erfunden / daß dem des [illegible] Freunde die [illegible] deß Beklagten auch dem Kläger Koſt und Schaden nach Ermeſſigung deſſelben Gerichts außrichten wollen / darin der Kläger [illegible] vnterſtanden vnerfindlichen Außführung der bemelten Entſchuldigung ge-

19 bracht würde. Conſtit. Crim. ad 183. Sed quid † ſi accuſatus [illegible] cautionem ejuſmodi, Magiſtratum ex publico ſumptus [illegible] propter fortunæ & facultatum inopiã paratus juſtus, [illegible] Sylvan. Conſt. [illegible] art. 1[illegible] Guido Pap. dec. [illegible] 5[illegible]. [illegible] ſufferre expenſas debet per ea quæ ſupra [illegible] Conſt. Crim. de art. [illegible] Was ſonſten Gerichts vnd ander Koſten auff Beſetzung deß Gerichts [illegible] Schöpffen oder Vrtheilen Koſtgelt / auch Gerichtſchreibern / [illegible] hüter / Nachrichter / vnd ſeinen Knecht [illegible] ſoll durch das Ge- richts / oder deſſelben Gerichts Obrigkeit [illegible] werden.

20 Damnatur † itaque confitendo, [illegible] carceris, incarcerati pecuniam ſolvere [illegible]. Das Fang- oder Schließ- gelt [illegible] cuſtodum [illegible] Ventur de [illegible] & cibus adferatur, [illegible] pauperes ſunt, pane & aqua [illegible] nus [illegible] Conſt. Crim. de art. [illegible] Fang vnd Schließgelt / [illegible] Vnd ſoll [illegible] ein Auffſeher für eins [illegible] Nacht [illegible] [illegible]

21 [illegible]

22 [illegible]

23 [illegible]

[illegible] *art.* [illegible] *&* [illegible] *Landrecht,* referuntur in Conſti[illegible]
† etiam conſuetudines [illegible] & damnabiles, ut cum aurig[illegible] onerati, 24
& incuria everſi, [illegible] æquè plauſtrum & quæ vehi[illegible]es
publicentur. Item cum [illegible] abſq; cauſa legitima eaq; incognita, in
carceres detruduntur [illegible] hominibus noxiis deſtinatis potiſſimum
[illegible] conſtit, *l. 2. C. de exact. tribut. lib.* [illegible] *ubi Bart.* [illegible] *Catilin.* [illegible] *de Valent.*
in part. [illegible] *lib.* [illegible] *ubi dicit,* Quod exemplo peſſimo multi judices
[illegible] veneficarum [illegible] contra complices illuſtres ſæpe perſonas,
[illegible] impu[illegible] *wann ſie andere beſagen* plenam fidem adhibeant,
perſonas delatas abſq; inquiſitione capiant & ſiquidem confiteri nolint ty-
rannorum more in carceres detrudant, torturæ & deniq; [illegible] ſubjiciant,
Godel. de [illegible] *mag. lib.* [illegible] *c. 6.* Illæ [illegible] cum ſibi moriendum ſit, aliorum vi-
tam, valetudinem lædunt atq; deludunt Diaboli inſtinctu. *Sie ſchweigen*
wann ſie brennen müſſen/daß auch die gantze Welt [illegible] † [illegible] 25
ſententia criminalis [illegible] per [illegible] à judice ipſo publicetur, da-
mnat Conſtitutio eadem. Deniq; [illegible] propter delicta, quæ cum bono-
rum publicatione [illegible] bona [illegible] onde
uxor & liberi [illegible] rei vindicare cogantur, *d. artic.* [illegible] Damnatur &
in Conſtitutione [illegible]
[illegible] *art.* [illegible] *ibi* [illegible]
[illegible] *Deus* [illegible]
[illegible] *Lex* [illegible]

[illegible]
[illegible]

Gail. 1. obſerv. 18. [illegible] *Wuſen*
[illegible] *ad L.* [illegible] *S.* [illegible] *lib.* [illegible] *C. de furt.*
Et afflicto afflictionem addit & accumulat, *Bruck.* [illegible] *de p[illegible]-*
ris, de Anno 559. Gail. d. loc. ubi refertur in cauſa Conſilium civitatis Ham-
burgenſis contra Duces Holſatiæ [illegible] mandata [illegible] clauſula [illegible]
fuiſſe.

Ejuſdem generis improbantur † conſuetudines ut [illegible] 26
[illegible] neque [illegible] *Tholoſan. lib.* [illegible]
Syntagm. [illegible] ju-
[illegible] per [illegible] publice [illegible]
Conſtit. Crim. art. [illegible] *die Richter* [illegible]
[illegible] *von* [illegible]
[illegible]
[illegible] *Tholoſ.* [illegible] 27
[illegible] *Weſemb.* [illegible]
[illegible] ut [illegible] *Ludov.* [illegible] *Damn.*

nia c.4 Godelm. de venef. & mag lib.3.c.5. Not. in diſſ feud. c. 44. [illegible] *cens c.41. Borcold. de feud. c.7. num.52. Gail. 2. de pp c.7. numer. 24.* [illegible] *luſt. diſp. 24. theſ. 13 vide part. 2. noſtri tractatus de indic. ſortilegii.* Sculis quoque eſt & damnanda conſuetudo, ubi ſubditus appellans, [illegible] ſaltare tenetur, ne omiſſa inſania hac, exiſtimetur vulgò illegitimè appellatum, ut refert *Keller. lib. 2. ff. jud. pol. c. 27.*

Non minus irrationabilis eſt conſuetudo paſſim, ut antequam judicii [illegible] ſtretur, certi quid ſolvatur, in das Bret quod advenæ [illegible]. Nam lex [illegible] pui eſt *Exod. 22.* advenam non contriſtabeis, ſed ubi id hodie [illegible] bi plerique ut plurimum nocent, quacunque valent fraude, [illegible] nis in commercio & negotiatione, licitè id fieri exiſtimantes, [illegible] non cum indigenis negotium ſit, ne dicã quanta [illegible] ratur advenis, tertiam illius partem, den dritten Pfenning [illegible] relinquere coguntur in dicaſterio judicii. Sic conſuetudo prava [illegible] ſupplicium à virgine [illegible] b. Hanſeaticis [illegible] tata, recepta, *qua de re Caſſan. in conſuet. Burgundiæ* [illegible] *tit. de juſtit. & droicts d'. sceles, &c. Boer. dec. 2.7.* [illegible] Sic conſuetudo perverſa eſt in Polonia, quâ nobilibus [illegible] pecuniâ cadaveri impoſitâ, redimere [illegible] rogaſſe ſentit, *Treutl part. 1* [illegible] Quam [illegible] Poloni [illegible] rogatam conſuetudinem illam volunt, cui [illegible] Regni Neapolitani, quam refert W[illegible] *lib. 1.* [illegible] ſtore ait [illegible] tendi gratia ad ſacerdotis [illegible] caſeum [illegible] jejunii tempore [illegible] res [illegible]. Sacerdos, qui [illegible] ter, illam reliquiſſe, [illegible] quadrageſimali [illegible] alius quoque obnoxius eſſet peccatis, negavit [illegible] paſtoribus quenquam [illegible] [illegible] apud [illegible] eſt conſuetum, &c. [illegible] negotiis [illegible] Neapolitano, in [illegible]

[illegible]

[illegible]

matronæ lugubribus veſtibus ſedebant, accedentibus interim medicis & inſpectum velut ægrum deterius ſe habere ſubinde pronunciantibus. Unde poſt ſeptem dies, ubi jam viſus eſt obiiſſe diem, deferebatur lectus in forum & cantatis illic hymnis & carminibus in defunctum, perferebatur lectus extra urbem in campum Martium & ponebatur in tabernaculum aridis fomitibus impletum. Quo poſtquam aromata & ſuffimenta omnis generis effuſa erant adequitaverunt circa tabernaculum univerſi equeſtris ordinis ſua quadam lege & motu circumacti item ſimul currus inſeſſi purpuratis Rectoribus. His peractis, ſuccendebatur tabernaculum, & ſimul cum ſubjecto igni emittebatur è faſtigio tabernaculi Aquila, quæ in cœlum credita eſt defuncti animam deferre. Hoc erat [illegible], hi ritus & ceremoniæ quibus Romani ſentiebant [illegible] principes ſuos in Deorum numerum referre, quos etiam poſtea ut Deos colebant. *Ita Cagnol. in l. 34. ff. de R. damnat.* conſuetudinem improbiſſimam [illegible], qui voluerunt à novis nuptis prima libere [illegible] [illegible]

Et de Volumnienſium ſervis tradit *Job. Sarisber. lib. 8. de nug. cur.* [illegible] quod legem [illegible] ſtupra ſua in viduis & in nuptis impunita [illegible] [illegible] haberet, cujus caſtitatem non ante aliquis ex numero [illegible] [illegible] delibaſſet. Anglorum conſuetudo improbatur, quæ pupillo vaſallo [illegible] matrimonium, quod is ſine graviori mulcta recuſare non poteſt [illegible] conſuetudinem, & cur ipſa non ſubſiſtat, docet *Tiraquell. de pœn.* [illegible]

Porrò Tarentinorum lex eſt, ut nullam filii à parentibus accipiant hereditatem præter arma, quibus pugnare ſolummodò poſſint ſolis omnium facultatum [illegible] heredibus exiſtentibus filiabus, quo maritos eò citius invenire queant, *Anton. de Guevar. in Horol. princ. lib. 2. c. 16. num. 3.* [illegible] Sic [illegible] lex Laconica, qua licebat cum marito de ſtupro ſive de adulterio conjugis tranſigere [illegible], *l. 18. C. de tranſact. Harpr. in §. 5 n. 27. de oblig. quæ ex delict. naſc.*

[illegible] lex [illegible] Regis [illegible] Perſarum, ut omnes [illegible] [illegible] contra [illegible] *Procop. lib. 1. de bell. Perſ.* [illegible] de adulteria [illegible] [illegible]

[illegible] Regis Siciliæ [illegible] [illegible] Regis, [illegible] *Neapol.* [illegible] conſuetudinem [illegible]

[illegible] regnum [illegible], [illegible] [illegible] prius domum [illegible]

 [illegible]

grandiori natu pernoctat. Adulterium ibidem non niſi omne iis, qui non ſunt de familia committitur, quare & adulter capite plectitur, *Joh. Bremus de mor. & ritu gentium, lib. 2. p. 68.* In Aſia mos eſt Ægyptiis, ut patres filios vigore patriæ poteſtatis antiquę poſſunt licite occidere, ne vero prorſus impune hæc ferant, conſtitutum eſt tribus diebus noctibusque continuis edictum, ut circa defuncti corpus adſiſterent, publica etiam cuſtodia aſtante non juſtum putantes eum vitâ privari, qui vitæ filiis auctor fuiſſet, *Johan. Boemus pag. 41.* Antequam corpus defuncti ſepeliatur lege permittitur, volenti mortuum accuſare aſtantibus judicibus amplius 40. numero ſi itaq; probatur defunctum male vixiſſe, judices cenſent corpus ſepulchro privandum, qui deprehenditur injuſte crimen objeciſſe, magna mulctatus pœna. *Idem lib. 1. pag. 52.*

Sic corpora reorum ex debito civili dabantur in pignus creditori, quæ redimere tenebantur heredes ſub pœna infamię, ſoluto debito, demum honorifice ſepeliebantur. *Idem citato loco.*

Quanquam in Panchaia Sacerdotes ſummo habeantur honore iisque pene divinus exhibetur cultus, attamen inventos eos extra locum Eccleſiæ & in prophanis cœtibus impune licet eos occidere. *Idem pag. 74.*

Sic conſuetudo in Tartaria viget qu. licet incolæ, quicquid viderit rapere, modo tamen nō ſit patriota ſed peregrinus, cui vis & rapina infertur. *Idem add. pag. 129.* Hinc induſtria rapiendi virtus illis eſt non ſecus ac acquirendi ſollicitudo, populis Aſiæ, Nebathonis dictis in maximam cedit gloriam. *Idem d. loc. pag. 72.* ibi: Qui rē domeſticam minuit, publicè mulctatur, contra honore afficitur qui patrimoniū auget hæc ille. Sic in Tartaria Clerici uſuræ & Simoniæ licitè & liberè operam dare poſſunt, plus etiā multo, quam cæteri potationibus & veneri indulgentes. *Idem d. loc. pag. 139.* Sic mos Athenienſium barbarus, licet lege Draconis introductus eſſet mentio dimovetur, quo permiſſum fuit fœminæ, qui viro parum ad rem veneream idoneo nuberet unum quem vellet, ex mariti propinquis admittere poſſet. *Idem lib. 3. pag. 188.* De Laconibus idem ſcribit *lib. 3. pag. 195.* quod [illegible] liceat honeſtum ex juventute probum aliquem ad uxorem [illegible] cauſa adducere, atq; ubi eam alieno ſemine impleſſet, ſuum quod naſceretur, efficere. Sic Thraces ex rapto vivere pro re honeſta habent, agros colere pro deſpectiſſima, *pag. 209.* Lituanis olim conſuetudo honeſta erat, matronis ut haberent cōcubinos, quos connubii vocatunt coadjutores, contra pellicatus viris probro datus, *pag. 217.* ut verè hic dici poſſit juxta illud Ariſt. ppt honeſtum non natura, ſed conſuetudine cōnſtare. Sic mos fuit quondam Boemis, ut quando ſacra peracturi loca ſubterranea [illegible], ut ſacerdote [illegible] hoc, creſcite & multiplicamini promiſcuè viri, candelis extinctis nullam [illegible] vel ſanguinis ratione habita, irruerent in fœminas [illegible] candelæ accenſæ [illegible] & ſacra peracta. *Idem lib. [illegible] pag. [illegible].* Con-

[illegible]

ſuetudo Germanis fuit homicidia certò pecorum numero lui, unde univerſæ domus occiſi ſatisfactionem capiebat, *Idem pag.* 244. Idem ſcribit à ſententiis judicum urbanorum, qui gratis judicandi munus exerceant majores nunquam appellaſſe ad ſuperiorem, indignum fore putantes, tantorum virorum gratis judicantiū decretis contradicere, laudabilis non barbara conſuetudo, *Idem pag.* 244. Sic in oppido quodam Carinthiæ mos ante hac fuit, ut qui in furti ſuſpicioné veniſſet & illicò ſuſpenderetur, poſtridie de ſuſpicione judicante magiſtratu, ſi ſons inventus erat, pendebat cadaver donec per partes ad terram deflueret, ſi inſons erat ſepeliebatur, exequiæque ex publico ſolvebantur, *Idem lib.* 3. *pag.* 294. Admiranda illius populi conſuetudo de eligendo Duce quoq; fuit, Duce mortuo vel vacante Ducatu non longe ab oppido, Siviti in valle ſpacioſa dirutæ civitatis viſuntur, &c. nomen loci vetuſtas perdidit: nec procul hinc in patentibus pratis erectus lapis marmoreus eſt, quem quum Dux creandus eſt, ruſticus quidam, cui per ſtirpis ſuæ ſucceſſionem hereditario id officium debetur, aſcendit, ad dexteram bovem habens fœtam, nigri coloris: Ad lævam æqua illi aſſiſtitur ſtrigoſa, macieque inſignis, frequens circa populos, agreſtiumque turba ingens. Dux inde futurus ex adverſo monet purpuratorum multitudine ſeptus: præcedunt principatus ſigna, omnesque in toto comitatu egregie culti, præter futurum Ducem. Is agreſti habitu, pileo tectus, calceos & paſtoralem baculum gerens, paſtorem agit magis quam Principem. Hunc venientem intuitus qui lapidem obtinet, illyrica voce (ſunt enim Carinthii Illyrii, hoc eſt, Sclavoni) quis eſt hic, exclamat, qui tam ſuperbe incedit? Reſpondet circumfuſa multitudo, Principem regionis adventare. Tum ille, juſtusne judex ſalutem patriæ quærens? liberæ conditionis, dignus ne honore eſt? Chriſtianæ pietatis cultor ac defenſor, clamatur eſt quidem, & erit. Rurſus idem, quæro quo me jure hac a ſede dimovebit? Reſpondet Ducalis Aulæ Magiſter, ſexaginta denariis hic abs te locus emitur jumenta hæc tua erunt, ad bovem & æquam manum intendens. Veſtimenta, quæ Dux exuet habebis, erisq; tu cum domo tua tota libera tributo. Quibus dictis, ruſticus malam Principis percutit, alapa leniter incuſſa, jubetque æquum judicem eſſe præmioq; abducto, loco cedit. Tum lapidem Dux occupat nudūque gladium vibrans, ad omnem ſe partem vertit populumque alloquitur, pollicetur ſe æquum judicem futurum. Ferunt & aquam in agreſti pileo oblatam potare in futuræ ſobrietatis argumentum. Deinde ad Solennem Eccleſiam, quæ in proximo tumulo ſanctæ Mariæ vocabulum & nomen habet, perductus ſacrificiis intereſt. Quibus peractis, humili veſte, qua adhuc indutus eſt, depoſita, paludamentum induit, ſplendideq; cum proceribus ſuis convivatur. Poſt hæc in pratum revertitur pro tribunali ſede jus dicit, & feuda confert. Summatim quis omnes omnium locorum conſuetudines impias & improbas conſignare & enumerare poteſt. Imo quis

aut

aut hebetibus & obtuſis aut mala conſuetudine obſeſſis, diu rubiginem animorum effricabit cote juſtitiæ, ut ait *Seneca Epiſt.* omne ſiquidem malum recens corrigitur inveteratum nunquam *Tacit. 14. annal. Cic. 5. Phil.* [illegible] *lib. 9. cap. ult. 22.* unde verſiculi hi communes:

Quæ præbet latas arbor ſpecialibus Umbras,
Quæ poſita eſt primum tempore virga fuit.
Tunc poterat manibus ſumptâ tellure revelli
Nunc ſtat in immenſum viribus aucta ſuis.

Et teſtatur *Ventur. in par. litig. lib. 2. p. 1.* Deum Ter Optim. Maximum non minus moribus perverſis, ac litibus, diſſidiisq; infinitis, quorum molem proceſſus per curias tranſvehunt, quam morbis ac reliquis adverſitatibus [illegible] & punire genus humanum. Ad rem redeo, ſed quia probationes in cauſis criminalibus, ut maximè ita regulariter teſtibus productis perficiuntur. De teſtibus, qui & qualiter admittantur.

Item quod eorum officium ſit in teſtimonio dicendo, [illegible] præterea, quæ capitibus aliquot antecedentibus tradidimus, dicemus. Etenim veritatem criminum fidemque probationibus certis imbui, nec ſuſpicionibus conjecturam permitti oportere, ait *Apul. lib. 10. de A. A.*

18 Et quidem ſupra nos dixiſſe memini minorem † in cauſa criminali teſtem exiſtere poſſe, ita accipiendum eſt, quoties veritas aliter haberi nequit, & crimen in quo teſtificari cogitur, ſit enorme, nefandum & exceptum, *l. 10. 13. c. de prob. Bald. in l. omnes, ff. de his qui ven. ætat.* item per librum † [illegible]
19 vulgo Tauffbuch, *Maſcard. vol. 2. de prob. concluſ. 1062.*

Item per aſſertionem nutricis, obſtetricis, *Bald. in L. 7. c. de in integ. rest.* & modis aliis, quos refert *Maſcard. d. loco.* Parentes conſanguineos ad 7. gradum uſque in cauſis liberorum, conſanguineorum & contra, teſtimonium dicere, cogi non poſſe, ſimiliter dixi d. loco, quæ maxima ſecundum nonnullos locum quoque tenet in patre naturali, filioq. naturali [illegible] *fa*[illegible]*o, § ſi quis, nu. 44. ff. ad SCtum Trebell. Felin. in c. cum oporteat* [illegible] *de teſt. reg. 1. Fallent. 5.* quod tamen ſequi [illegible] juris ratio [illegible] permittit: Quanquam de matre & Filio naturali hoc certius [illegible] poſſe conſtet, *argum. l. 5. C. ad Set. Orph. argum. §. peu. inſtit. de nupt.* Sed quoties de probanda ætate filii quæſtio agitur, parentes indiſtinctè [illegible] poſſunt, *gloſ. in l. etiam de prob. l. 6. c. de teſt. Maſ. in l. 1. §. ad quæſt. ff. de quæſt. Bart. in l. qui teſtamenta quæ* [illegible] *ff. de teſt.* Item ſi pars adverſa contra quam producuntur teſtes ejuſmodi, nihil contradiceret, nec exciperet contra ipſos, *Camp. reg. d. loc. Cra*[illegible] *conſ. 1*[illegible] *n. 2.*

20 Nam regula eſt: quod teſtes † inhabiles de conſenſu partium validari & habilitari poſſint, *Hipp. de Marſ. d. loc.* in cauſis [illegible] criminalibus comparatis cauſis, parentes [illegible]

conſ.151.vol.5.Dec.conſ.36[illegible].Parıſ.conſ.5[illegible].volum.4. Ita in cauſa civili, cum inſtrumentum ſibi conſcribi facit filius, teſtis eſſe pater non prohibetur, *Bald. in l. 6.c.de teſt. L. ad teſtium §.1.ff de teſt. Maſc.concluſ.1148.vol.31.*

Cognatio † ſpiritualis quoque cujus origo fluxit a Gregorio Higino, 31
Epiſcopo Romano circa annum Christi 14[illegible]. *Chytr. in Iohan. c.fin.* non impedit, nec ſuſpectum facit teſtimonium, quandoquidem edictum de teſtibus prohibitorium ſit tam in cauſa criminali quam civili, ut intelligatur, quicunque non reperti fuerint prohibiti de numero quorumcunque teſtium, admiſſi [illegible] cenſeantur, [illegible] compater patrinus non reperitur prohibitus. Ergo *l. 1.ff. de teſt. Bald. Salicet in a[illegible]6. & c. de teſt.*

Adulter, [illegible] perjurus a teſtimonio dicendo penitus removentur, *c. con-* 32
ſtituimus,3.q.5.l.ſi[illegible].ff.de teſt. Specul. in tit. de teſte text. in c.teſtimonium.tit.54. & c.ex parte extra de teſt. l.21.ff.de his, qui not. infam. Etenim † teſtimonium 33
dicere partim dignitatis eſt, *gloſ. in c.accuſatus, §. licet ab heret. in 6. Bald. in l. 2.nu.3.ff.de Senat.* Et inter officia publica refertur, *Alber. de Roſate, l.2.§ 3.ff. ſi quis caut. Bald in rub. c.de teſt.* Dixi etiam *in dict.c.6* pauperem teſtem exiſtere non poſſe in cauſa criminali. Quod ſic accipiendum eſt, modo pauper famæ deſpectæ & vitæ turpis ſit, non ſi exiſtimationis honeſtæ vel vitæ frugi fuerit, *c.ſi quis teſtium ubi Felin. & C. de teſt. Bart. in l. 3. ff. de teſt. Alex. conſil. 149. vol.5.* Etenim [illegible] eſt, Armuth iſt keine Schande noch Unehr, ꝛc.

Imo teſtis bonitas & integritas non in divitiis, ſed in fide principaliter conſiſtit, *argum. §[illegible]1.inſt. de ſu[illegible]ect.tut.gloſ. in l.3. ff.de teſt. Gramm.conſil.52.*

Planè teſtem † pauperem non repellendum a teſtimonio exiſtimat, 34
Ayr. in proceſſ.c.7.obſer.2 [illegible]n. Quoties de innocentia rei probanda cogatur, quod a[illegible]s dici nequit. Etenim eadem hinc ſubeſt & militat prohibitionis ratio, quæ facit, cur pro accuſatore contra reum teſtari nequeat, ecquis enim dubitat, æquè pauperem corrumpi poſſe, prece vel precio, ut pro reo, quam contra reum teſtimoniũ dicat. Imo videtur ratio prohibitionis fortius ſtringere hac in cauſa. Neque obſtat quod pro defenſione reorum propinqui amici admittantur, *Dec. in l.ſi is qui,c.qui teſt.fur. pol. Hyppol. de Marſ. in ſingul.39. Menochard vol.3.conclu[illegible]*, quod hoc ſingulare ſit, non trahendum ad conſequentias, *l.14.15.16.ff.de ll.*

Di[illegible] Domeſticos à teſtimonio dicendo repellendos in cauſa domeſtica, *c.[illegible], §.item q.[illegible]. ubi [illegible] de teſt. l. 2. c. eod l.[illegible] §. C.de his, qui ad Eccleſ.conf. l.pe[illegible]c. qui accuſ.non poſſunt*, quapropter † uxorem pro viro 35
& contrà teſtificari non poſſe [illegible] *in l.[illegible] ſi quis caut. Bart. in l. 2 §.conveniunt, ff. de teſt. Hyppol. de Marſ. in l.1.ff. de [illegible]. Burſat conſ[illegible]. Johan. de Platea in l.10.C de re milit. lib.12.* Quæ concluſio diſplicet Speculatori, *in §.1.de teſte, verſ. ſed quid de uxore*, propterea quod edictum de teſtibus prohibitorium ſit, nec mulier excepta in edicto reperiatur. Reſp. quod licet

Aa verbis

verbis expreſſis excepta non videatur, uxor non tamen ſententia ed[illegible] & legis admittatur, nempe propter magnum affectum, quem præ ſe fert conjugium, hinc vir & uxor dicuntur duo in carne una, *Geneſ. 2. & 3. &c.*

Porrò ſi cauſa domeſticitatis eſt, quod ad unum [illegible] & [illegible] teſtis cum producente ut ſic, teſtimonium non recipiatur, quod extra controverſiam eſt: quanto magis non recipienda uxor, quæ [illegible] domeſticam agit conſuetudinem, imò quæ eandem cum viro, ut [illegible] mus conſtituit carnem, *c. ſicut. §. neceſſe diſt. 47. gl[illegible] l.[illegible] §. ſane, C. de [illegible] qui ad Eccl[illegible] Jaſon. l. 4. §. 1. ff. ſi quis caut. Hyppol. de Marſil. in d. [illegible] n. 6. ff. de qq.* Deinde familiares à teſtimonio dicendo repelluntur, eſt [illegible] amicitia politica quædam agnatio, hinc amicus alter ego, *Bart. in l. 22. [illegible] ff. d. [illegible]* Ecquis vero amicitiam inter conjuges conſtare in gradu ſummo unquam dubitavit per ea, quæ in capite antecedenti dixi. Ergo atque hac ratione placuit legum conditoribus, ne ſibi invicem donare poſſent conjuges ne affectus ille venalis videretur, ſed omnino liber & perfectiſſimus eſſet, *l. 1. de donat. int. vir. & uxor.* Quanquam omnes alii contractus inter conjuges celebrati jure ſubſiſtant, *Bald. in l. 58. ff. de do[illegible] int. vir. & uxor. Alex. conſil. 8[illegible] volum. 5.* ut [illegible] venditio, *l. 12. ff. de præſcript. verbis, l. [illegible] §. 3. ff. de [illegible] dot. l. 5. §. 5. l. 3[illegible] §. 3. ibi gloſſa, [illegible] de don. int. vir. & uxor. [illegible]* contractus pignoratitius *l. 7. §. [illegible]* mutuum, *l. pen. l. fin. de in rem verſo. d. l. 7. ubi Dd. de donat. inter vir. & uxor. l. 58. ubi Bald. ff. eodem, l. 17. ff. ſolut. mat. l. 16. §. 3. de alim. & cib. leg.*

Denique, ut plura paucis comprehendam, ſciendum eſt generaliter in cauſis criminalibus teſtes, ut maximè requiri omni exceptione majores, scilicet quibus nihil poſſit meritò opponi, quorum fama in nullo penitus labefactata ſit, ita ut teſtis idoneus in cauſa civili ſæpènumero non idoneus ſit in cauſa criminali, *Bald. in l. ſi quis, C. ad L. Jul. unde vi.* multò fortius dicendum: Quicunque teſtis in cauſa civili reperiatur à teſtimonio dicendo repellendus non admittatur, idem in cauſa criminali. *Dec. conſil. 429. Hyppol. de Marſil. conſil.*

16 *12. volum. 1. Bald. in d. l. ſi quis.* unde infertur: Quod perjurus † [illegible] homicida, vagabundus, peregrinus, hæreticus, pluriumque alii, quos refert [illegible] *in d. §. de teſte.* teſtes eſſe hic nequeant, quia in cauſa civili repelluntur à teſtimonio dicendo *[illegible] ff. de teſtib.* Perjurus regulariter teſtis eſſe nequit, nempe quod præſumatur amplius pejeraturum, qui ſemel pejeravit, [illegible] *quæſt. 5. c. [illegible] 2. de Simonia [illegible] ff. in l. 21. ff. de his, qui not. [illegible]* [illegible] in omnibus mendax præſumitur, *argum. l. fin. ff. de [illegible] Pub[illegible] propriam, C. de non num. pec. Maſc. de prob. [illegible] num. [illegible]* trita analogia eſt. Quod ſemel malus, ſemper malus præſumitur in eodem delicti genere, *c. ſentit. de R. J. in 6. c. 4. § fin. [illegible] de tranſl. in [illegible] l. 1. § 1. ubi Bald. ff. de ac[illegible] Carbar[illegible] num. [illegible]* [illegible] illo & delinquendi conſuetudine per [illegible] [illegible]

Monach. §. *nunc autem Jaſon. l.15. ff. de Nov. op. nunc. l.11. C. de inoff. teſt. c. in ſinu autem de Simonia Decius, conſil.* 163. *Rom. conſil.* 236. ubi dicit, quod ille, qui per triennium a malo abſtinuit & bene vixit, dicatur novus homo, *Maſcard. d. concluſ.* 1005. quod an hodie in practica obtineat addubito, *vide Tiraquell. de pœn. cauſ.* 51. *n.* 18. *& ſeqq.*

Cæterum quod † mendax à teſtimonio dicendo repellitur, accipien- 37
dum eſt non de mendacio quovis, ſed de pernicioſo tantum & nocivo. Quale eſt illud, quod in cauſa ſpirituali committitur, ut cum quis Deum blaſphemavit, abnegavit Chriſtum, fidem Apoſtolicam impugnavit, Sathanæ ſe tradidit, &c.

Item hoc in cauſa ſeculari, cum quis falſus † accuſator, calumniator 38
teſtis falſus in cauſa criminali extitit, vel etiam in cauſa civili exemplum eſt, 3. *Reg.* 21. *&* 13. *Daniel.* Sunt adhuc alia mendacii genera, ut eſt mendacium otioſum. Quando ſcilicet ex ſola mentiendi libidine, in aſtuta mendaciorum compoſitione quis delectatur, quod neq; nocet neque prodeſt. Deinde eſt mendacium, quod fit cupiditate placendi, quale eſt mendacium adulationis. Hæc & cætera mendacia teſtem non repellunt a teſtimonio dicendo, ſicut mendacium pernicioſum teſtem repellere diximus. Multò minus mendacia licita & quæ fiunt pro ſalute æterna conſervanda, repellunt teſtem, ut *Geneſ.* 12. *&* 20. *Alex. in L. qui dotem num.* 2. *ff. ad SC. Trebell.* Quo refero mendacium dictum vulgò, ein Nothlügen / cum quis neceſſitate extrema & mortis periculo inſtante mentiri cogitur, *vide part.* 1. *de indic. gener. cap.*

Homicida † teſtis eſſe nequit, quia infamat homicidium ex proæreſi 39
non caſu vel ex neceſſitate commiſſum, *t. t. ff. de his, qui not. infam. Dd. in l.* 1. *ff ad L. Cornel de Sicar.* Atqui teſtis infamis repellitur. Ergò.

Sic † vagabundus à teſtimonio repellitur, *Archidiac. in c.* 16. *queſt.* 1. 40
Pariſ. conſil. 83. *volum.* 3. *Alex. conſil.* 89. *vol.* 1. *Marſil. conſil.* 28. *vol.* 1. Dicitur autem vagabundus, qui nuſquam apparet, certa ſede vel habitatione, licet domicilium originis ratione habeat, *l.* 2. §. *celſus, ff. ad munic. l. dies.* §. *præter ac.* [illegible] *de dam. infecto. Gail.* 1. *obſerv.* 1. *num.* 33. de peregrino idem conſtitutum legimus *in Conſt.* [illegible] *m. art.* [illegible] ibi: Unbekandte Zeugen ſollen auff Anſuchung deß [illegible] [illegible] zugelaſſen werden / es würde dann durch den / ſo die Zeugen ſtellet [illegible] fürgebracht / daß ſie redlich vnnd vnverleumbt weren / *Farin. de teſt. tit.* 2. [illegible] *Maſcard. concluſ.* 227. *Menoch. de præſumpt.* 5. *q.* 1. *num.* 76. An ſocius † criminis [illegible] & admittatur in teſtem, Reſp. 41
regulariter non admitti ſocium [illegible], niſi quando crimen per alios probari non poteſt, *text. in c.* [illegible] *des* [illegible] *de* [illegible] *d.* dicitur *in l. quoniam C. de ſumma Trin. Bernhard Bembi.* [illegible] 503.

Cæterum hæreticus † teſtis inhabilis [illegible]. Quis autem hæreticus † di- 42
catur propriè inter Dd. non conſtat pro [illegible], [illegible] hæreticus dicitur, 43
qui

qui non in omnibus Romanæ Eccleſiæ placitis decretis & Conciliis acquieſcit, *per c. nulli diſt. 19. & c. de libellis diſt.* aliis, qui in fide dubius eſt, *per c. 1. de hæret.* Nonnunquam quoque ſolum ſchiſma pro hæreſi accipitur, [illegible] *reſin, 24. quæſt. 7. c. ad ſuccedendos de ſchiſm. & Simoniæ c. quiſquis. quæſt. 1.* [illegible] hæreticus dicitur, qui ſcripturam ſacram ad ſui cerebri ſomnia detorquet *per c. hæreſis, 24. q. 1.*

Verum ut certitudinis hac in re ardua nonnihil habeatur, [illegible] eſt: Quod potiſſimum concurrentibus requiſitis hæreticus dici ſoleat.

1. Si Chriſtum profeſſus ſit primum hæreticus recta & inculpata fide priuſquam in errorem laberetur, juxta illud 1. *Joh. 2. v. 19.* e vobis egreſſi ſunt, *Actor. 20. v. 30.* ex vobis ipſis orientur, qui loquentur perverſa, *C*[illegible] *reſis. 2. Covar. 3. reſol. 1.* hæretici ſiquidem omnes ſcripturam jactant & errores alios arguunt neque id ſubmirandum, ſcriptum quippe conſtat, quod Diabolus in Angelum lucis ſe transformare poſſit, inde infertur. Quod Pagani, Mahometani, Judæi, Saraceni, hæretici proprie dici nequeant, cum fidem Catholicam, Spiritus ſancti afflatu nunquam amplexi profeſſique fuerint, privatio [illegible] præſupponit.

2. Ut error, quem fovet hæreticus, ſit in fundamento, adeoque in fidei regul[illegible] *2. C. de Sum. Trin. l.* [illegible]*8. ubi gloſſ. hær. & Man. Dec. conſil.* [illegible] Fundamentum aliud nemo ponere poteſt præter id, quod poſitum eſt, quod eſt Jeſus Chriſtus. Item ut ſecundum Apoſtolicam diſciplinam Evangelicamq; doctrinam Patris Filii & Spiritus ſancti unam Deitatem ſub pari majeſtate & ſub pia Trinitate credamus, *in l. 1. C. de Sum. Trinit.*

Hanc legem ſequentes (pergit textus) Chriſtianorum Catholicorum nomen jubemus amplecti: reliquos verò dementes veſanoſque judicantes, hæretici dogmatis infamiam ſuſtinere divina primum vindicta, poſt etiam motus animi noſtri quem ex cœleſti arbitrio ſumpſerimus ultione plectendos, *d. l. 1. §. 1. C. de S. Trin.* Non obſtante eo, quod *Pet. de Raven* [illegible] *Clericus,* [illegible] *tit. 27.* ſcribit titulum hunc de Summa Trinitate & fide Catholica nec non de Epiſcopis & Clericis hodie non obtinere, ſequendum eſſe ſcilicet in hac materia jus Canonicum.

3. Ut [illegible] & legitima converſio, quam tamen flocci pendit ille, errorem [illegible] defendere geſtiens [illegible] *c. qui in Eccleſia, 24. q.* [illegible] *unde Juſtin. in Novel.* 4[illegible] Reſpuendi ſunt (ait) hæretici quos [illegible] ctenus rec[illegible] & [illegible] fides illuxit ſed in tenebris ſedent [illegible] ſentientes ſacramenta, obſtinati ſeducunt ſimpliciores [illegible] ipſis nomen Chriſtianorum imponentes, et [illegible] Chriſtianorum [illegible] [illegible] ſeparantes *Novel.* [illegible] quorum libri nec [illegible] [illegible] ſcribens [illegible] *Novell.* [illegible] [illegible] evidentius [illegible] *Dec. Novell.* [illegible]

De

4. Denique requiritur condemnatoria ſententia, *l. 29. ff. de Jur. fiſc.* ibi verum oportet prius & de crimine pronunciari, *Hypp. de Marſ. rubr. ff. ad l. Cornel. de falſ. num. 24. Grammat. deciſ. 11. Zabar. in clem. 1. nu. 7. Ioh. Daut[illegible]. de teſt ſubſt. 1. qui teſt. fac poſſ. num. 248.* Ex quibus infertur, quod proteſtantes erroris & lapſus de Eccleſia vera Catholica nondum convicti, nec condemnati, ut hæretici removeri nequeant à teſtimonio dicendo in cauſis Catholicorum, non minus quam ipſi Catholici à proteſtantibus repelli non poſſunt, *Receſſ. Imp. ann. 555. §. vnd nachdem* ec. De Concilio Tridentino nihil eſt, quod hic opponamus, quod conſtat tot nullitatibus convolutum, erroribus compactum, vi & vi armata confirmatum, quod quoque ſubſcribere noluerunt Galli, ſubſcripſerunt id imberbes & imperiti Itali & Græculi, Hiſpani non niſi cum proteſtatione, lege acta totius illius concilii apud *Petr. de Suavis, Polanum in Hiſtor. Concilii Trident. lib. ult.* ubi Papa tandem in multis articulis præſertim in loco Cœnæ Dominicæ, deq; calice Laicis reſtituẽdo, cum jam conſummatũ eſſet mutare, niſi Simoneta Cardinalis id maſcule impediviſſet. *Petr. Suavis d. loc.* Sed ad rem redeo. Cæterum huc pertinet commune brocardicum: Ut ob quam cauſam recuſari poſſit judex, eadem quoque ſit ſufficiens ad removendum teſtem à teſtimonio dicendo. At Catholicus declinare nequit judicem reformatæ religionis, *d. receſſ. Ord. Camer. paſſim*, cujus vigore uterque Catholicus ac proteſtans in Cameræ aſſeſſoratu funguntur ſine contradictione. Ergo removeri neuter poteſt, nec ſcrupulum movet, quicquid contra ſaluberrimam hanc de pace religionis conſtitutionem obſtrepunt & veneni ſpirant non pauci pacis oſores, quaſi ea obligatoria non ſit adeoq; revocanda ex edicto *Quod met. c. uſa.* Unde *Georg. Aider in libro* Evangeliſcher Wegweiſer genant: Es ſey der Religionsfriede ein nichtig vnd zerrenliches Werck. Quaſi ſcilicet Carol. V. per concuſſionem proteſtantium metu pulſus juſto, pacem ejuſmodi facere coactus fuerit. Omnium impudentiſſimi novelli Pontificis Janizari ſunt, qui pacem religionis Concilio Tridentino ſublatam eſſe contendunt. Sed hæc & ſimilia qua levitate adferuntur, eadem facilitate pernegantur. Metu [illegible] actum Cæſarem clamitas tempore tranſactionis Auguſtanæ: falſum eſt & adſertum impudens. nam uti in nupero quodam ſcripto [illegible] Germanico: Der Augapffel genant / demonſtratum eſt, tempore [illegible] tranſactionis Paſſavienſis, neminem Lutheranorum nedum cohortem [illegible] armatorum ſuſtinuerit. Sed [illegible] metu turbatum Cæſarem vel ſubvertitum [illegible] proteſtantium [illegible]tionem, illud quale quale adſertum, ut prorſus nullum eſt purgat & explodit ipſa Conſtitutio verbis diſertis & clauſulis ſalutaribus, [illegible] quæ effata reſcriptis & receſſibus inſerta, omne quodlibet [illegible] ſub- & obreptionis excludunt, metum dolum & præ[illegible] errorem [illegible], *Andr. Knich. in c. fin. de non prov. Saxon.* [illegible] tem;

tem, dolum & metus exceptionem tollunt clauſulæ illæ potentiſſimæ ac jurator iæ receſſui, anne 6. ſolches ib: ſeuen vnd wollen Jhr Liebden vnd Kayſerliche Majeſtet/ vnd Wir bey vnſeren Königlichen Würden vnd Worten/ für vns vnd vnſere Nachkommen ſtäde/ feſt vnd Vnverbrüchlich vnd Aufrichtig halten vnd volend ziehen/ dem ſtarck vnd vnwe[illegible]erlich nachkommen vnd geleben/ vnnd darüber jetz künfftiglich weder auß Vollenkommenheit oder vnter einigem andern Schein/ wie die Namen haben möchten/ nit fürnehmen/ handlen vnd außgehen laſſen *&c. & in fine Constitutionis, § fin. ibi*: Bekennen offentlich mit dieſem Abſchied/ daß alle vnd jede abgeſchriebene Puncta vnd Articul alſo/ wie obſtehet/ mit feſtem guten Willen/ Wiſſen fürgenommen vnd beſchloſſen ſeind.

Porro quid Concilium Tridentinum ad pacem hanc politicam? De cujus nullitate utpote quod contra Patrum decreta, Majorum instituta indictum & celebratum fuit, ſupra quodammodo eſt demonſtratum, quod nec religionis controverſias in luculentam conſonantiam redegit, ſed potius errores Papæ a primitiva Eccleſia jam olim damnatas ab orco revocavit, lites funeſtas ſeminando, mendacia defendendo quorum pater & architector eſt ipſe Sathan. Papa quē erroris convinci pu[illegible], ipſe judex conſtituitur, agens & judicis & partis vices, decretis canonū Apoſtolicæ & vere ortodoxæ Eccleſiæ è diametro repugnantes, cauſa non divinis ſed humanis oraculis affectata præjudicandi libidine deciditur ut cū Patre Auguſtino *in explic. Conc. Conſtantinop.* meritò hic liceat loqui, attendendum eſt, non quid, ſed qualiter [illegible] ceſſum fuerit, ſalubrius (ait) feciſſent Siſinnius, Theodoſius & reliqui ſi ſecundum ſcripturas examinaſſent controverſias: Dum vero ad [illegible] provocarunt judicia, ſimiles facti ſunt Arianis, de quibus Socrates ſcribit *l. 4. cap. 26.* quod jactare ſoliti ſint ſe legiſſe libros Origenis, quos & citarunt in teſtimonium ſui dogmatis Et commemorat idem Auguſtinus Creſconium hæreticum Donatianum attuliſſe autoritatem Cypriani *Auguſt. contra Creſc. lib. 4. cap. 17* Contra Creſcentium Gramm. *lib. 2. cap. 3.* eorum [illegible] in hæc verba: Ego hujus C. Cypriani authoritate non teneor, quia literas Cypriani non ut Canonicas habeo, ſed eas ex Canonicis conſidero: Et quod in eis ſcripturarum divinarum authoritati congruit, cum laude ejus accipio, quod autem non congruit, cum pace ejus reſpuo *Idem lib. 3. cap. 6.* Contra literas Petiliani. Sive de Chriſto, inquit ibi, ſive de ejus Eccleſia ſive de quacunque re alia, quæ pertinet ad fidem vitam noſtram, non dicam ſi nos, ſed ſi Angelus de cœlo annunciaverit novum, præterquam quod in ſcripturis legalibus & Evangelicis accepiſtis, anathema ſit. *Galat. 1 v. 8. vide Bembenet.* [illegible] *1. cap. 12.* [illegible] *1. proceſ.* [illegible] *Ubert.* [illegible] *§.* [illegible] *cap.* [illegible] *Part. Litig lib. 1. cap 6. & 2 c. 4. Schonborn 4 polit. 6* [illegible] ad [illegible] cauſæ redeamus quod [illegible] firma conſtans que [illegible] o

nitpax & integritas, priuſquam antiqua Imperii jura Pontifex Imperatori reſtituerit. Maximilian. Primum tentatum fuiſſe hoc ſcribit Warémund. ab Erenberg. & literis Septemviros ſollicitaſſe Carolum V. refert *Valent. de Valent. 2 cap. 13. nu.* 1 . Ut Romanam urbem Imperii caput, ejusq; jura priſtina repoſceret, redderetq; Imperio, quem reſpōdiſſe perhibent, facerem hoc niſi me religio moveret. Interea violatis legibus, & turbato Imperii ſtatu politico, fulminare Reges, Principesq; deponere Papa nō intermittit, leges precio figere atq; refigere non erubeſcit nec veretur, ac quotieſcunq; veritatis relator mōſtroſam illam ſuperioritatem & dominatum papalem, uno atq; altero taxat verbo vel ſcripto, ut hæreticus igni ſubjicitur & indignâ morte concrematur, *Ubert. Gemn. Epiſc. in d. §. 33. cap.* 16. adeò ut ſi quis hodierno ſeculo in ambiguum ſaltem perducatur, comperat ne poteſtas ejuſmodi Papali ſedi? Venialiter, ſin de eo ſermones miſceat, quærens de veritate cauſæ, peccare mortaliter dicatur. Atq; hinc (ſubdit ille) illimitata & prorſus metaphyſica juris Capitolini poteſtas, tyrannicus dominatus & crudelitas immanis, primam Europeis tumultibus, cladibus & motibus inteſtinis occaſionem præbuit, ratio. Quoniam omne Imperium Politicum, ſpontanea imperandi & parendi conventione conſtat, *Ariſt. 1. Polit. 1. 7. 12. Eth. 11.* At poteſtas Pontificia non ſpontanea & libera Laicorum ſubjectione, ſed cum prætenſa ac cōmentitia quadam ſuperioritate eſt conflata & conficta, *vide Arniſæ. in tract. elegantiſſ. de poteſt. temporal. Pontific. in princip. & translat. Imp. Romani. cap. 4. & 5. adde Theodor.* Reinking *in tract. de regim. ſecul. lib. 1. claſſ. 2. cap. 7. num.* 8. atteſtantem, quod poſtquam Imperium Romanum ab Italia fuerit ſeparatum, ſemper ſe vitium declinaſſe ad ruinam. Ut tandem ſuper ruderibus & reliquiis S. R. I. quod dictu turpe eſt, ſit demum ſuperſtructa Monarchia prætenſa Papalis, juxta illud. Quia unius corruptio, generatio ſolet eſſe alterius, *Pet. Molin. de Monarch. Rom. cap. 23. & ſeqq.* quod & jam dudum conſuluit & prædixit pro concione publica Pontifex Johannes 22. nempe pro virili enitendum eſſe Pontifici Maximo, ſi ſalvus eſſe velit, ut aureum ſerpentem (id eſt Alemannorum Imperium) conterat, atque in cineres & favillas redigat, *Joh. Wolf. tom. 2. lect. memor. p.* 271.

Sed omiſſis hiſce parergis ad rem redeo & ulterius ſtatuo, quod in cauſis judiciorum non teſtari poſſit inimicus, *l. 3. ibi vel an ei inimicus ſit, &c. ubi Dd paſſim. ff. de teſtib. l.* . *§. præterea, ff. de qq. auth. ſi teſt. C de teſtibus, c. repellantur ext. de accuſat. c. cum P. Manconella, c. meminimus, c. cum oporteat eadem. Boſſ. de inquiſit num.* 82. *Farinac. de teſtib. lib. 2. tit 6. quæſt. 53 num.* 1 . ubi adjecrunt quod ... dum judici pariat teſtificatio, intellige quoties recta deponit ... quod eſt in quæſtione, quin quod inimici teſtis depoſitio etiam in crimine læſæ majeſtatis repudietur ubi alias teſtium inhabilium fides integra eſt, *per t. .. ext. de Simon. Spec. de accuſat. §. ... fine*

Sed

Sed de hoc teſte dicemus in conſilio ſubnexo uberius. Porrò mulier teſtis eſſe nequit in præſentiarum, *c. mulierem, 33. quæſt. 5. gloſ. ibidem in* [illegible] *teſtis,* [illegible] *de* [illegible] *gloſ. in c. quoniam de teſtibus*, quam ſententiam [illegible] ſecundum antedicta intellige, niſi quod indicia pariat depoſitio mulieris, quæ de delicto immediate teſtificatur, *vide part. 1. de indic. generalib.* [illegible] durum vero quoad probanda ipſa indicia admittere mulierem, quæ in omnibus illis caſibus, ubi infames de jure Canonico admittuntur, de [illegible] teſtificari poteſt, *gloſ. in d. c. mulierem, 33. Gandin. de maleſic.* [illegible] *defens.* [illegible] *tron. num. 8. verſic. niſi in caſibus in quibus infames admittunt, &c.* Aliàs in cauſi probandæ innocentiæ ubi & inhabiles alii admittuntur, mulier recipitur, [illegible] non famula & pediſſequa in cauſa dominæ, *Cravett. conſil.* [illegible] *num.* [illegible] *Farinac. lib. 1. de teſtib. tit. 6. quæſt. 59. caſ. 1. num. 13.* Cæterum qualiter mulier in cauſa civili & teſtamentaria in teſtem recipiatur, *vide eundem in* [illegible] *tibus caſ. 2. & 3.* Multò minus aliquis in cauſa propria teſtis eſſe poteſt, *l. nullus, ff. de teſt. b. l. omnibus, C. eodem, c. inſuper. ext. eadem.* Non pauci hic excipiunt teſtes vel Principales ipſos admodum legales, *Burſat. con.* [illegible] *nu. 38. volum. 1. Farinac. d. loc. quæſt. 60. num. 58.* necnon [illegible] ſtuprorum, ubi de infamia viri boni deliberanda agitur, *vide Farinac. d. loc.* Sed ut ut res ſit regula prædicta adeo vera eſt, ut neſciam, qua fide ſalvanda ſit hæc limitatio. Quanquam accuſator ſæpenumero admittatur pro teſte, [illegible] in denunciatore eſt receptum quoad delicta leviora, *Campeg. de teſtib. reg. 144.* necnon in accuſatore furis vel prædonis, ut juret in litem ſuper quantitate rei ablatæ, [illegible] *Dd. in l.* [illegible] *in ff. de in lit. jurand. Farinac. d. loc. quæſt. 6*[illegible] *limitat. 1. num. 7.* Sic in cauſa hæreſeos accuſator teſtari poteſt, quod ſpecialiter receptum eſſe tradunt, *Canoniſtæ in c. in omni negotio, ext. de teſtib.*

De Advocato quoq; ſolet quæri an teſtari poſſit? Quod teſtis eſſe nequeat nempe propter affectionem præſumptam decidit, *l.* [illegible] *ff. de teſtib. ad* [illegible] *teſtes omnes, §. teſtes, 4. q. 3.* hæc cauſa quoque ipſum clientulum [illegible] ne vice verſa pro patrono ſuo poſſit teſtari, niſi [illegible] in cauſa ca- ſu innocentiæ probandæ, Advocatus quippe & [illegible] pro domeſticis reputantur, *c. 1. §.* [illegible] *ubi* [illegible] *comm. de cont.* [illegible] *de part. fiat. Farinac. d. loc. quæſt.* [illegible] *num. 125.* [illegible] limitat & declarat hanc regulam de procuratore idem eſt judicium, [illegible] *ubi gloſ. & Dd. de teſtib.* qui [illegible] admittitur ab adverſa parte productus, ut omnes accuſati [illegible] domeſtici, conſanguinei contra accuſatum admiſſi integrè probant, *Farinac. d. loc. num. 232.*

Clerici an teſtificari poſſint in cauſis civilibus dubium minus [illegible] *gloſ. in d. authent. ſi* [illegible] *C. de teſtib. in* [illegible] criminalibus, res altioris eſt diſquiſitionis, *Campeg. de teſtib.* [illegible] ſpecie de Monachis agit. [illegible] *Farinac. in* [illegible]

te ſtib. quæſt. 61. oppoſit. 14. lib. 2. tit. 6. ubi hanc quæſtionem tractat, nihil quoad Monachos reſpectu criminalis materiæ decidat, an bigi tamen non debet, quia Monachus, (de Clericis aliis, qui dignitate quadam præfulgent, minor eſt dubitatio) in caſibus ubi teſtes inhabiles recipiuntur, teſtis eſſe poſſit. Cum etiam ſervus quæſtione mediante teſtari poſſit in re criminali, *l. 1. ff de qq.* At Monachi cumprimis & regulariter ſervis ſolent aſſimilari, qui tamen ſine tortura admittendi ſunt, cum ſimile non ſit idem uti in Scholis loquimur & ſimile non currat quatuor pedibus *Eberh. in top. in loc. a pari*, vice verſâ, num Laicus contra Clericum in cauſa criminali admittatur teſtis, controverti ſolet? text. in c. de cætero de teſtibus, id ἀπλῶς negat *vide Farinac. d. q. 61. oppoſit. 13. cum multis ibidem allegatis num.* 109. ejuſdem quæſtionis ſtatuit Laicos contra Clericos teſtificantes ſaltem indicia præbere quoad torturam cum multis ſimiliter ibidem citatis Dd.

CAPUT XXXII.

DE COPIA INDICIORUM REIS DANDA?

SUMMARIA.

1. *Probatio facti anima eſt proceſſus.*
2. *Boni viri tacere malunt, quam probare.*
3. *Indicium facti quæſtio eſt.*
4. *Captura decerni non debet ſine diffamatione, fama præexiſtente, vel indiciis ſtrin gentibus.*
5. *Index actis inſerat, quo jure capturam decreverit.*
6. *Indicia leviora ad capturam graviora, ad torturam præſtant.*
7. *An Copia indiciorum leviorum ſit communicanda reo in ſcriptu, ante citationem?*
8. *Explicatur l. 18. §. . ff. de qq.*
9. *Indicia graviora quæ ad torturam ſpectant reo omninò ſunt communicanda.*
10. *Copia indiciorum reo denegata nullitatem prægrandem inducit.*
11. *An in notoriis danda ſit copia reo?*
12. *In cauſa hæreſeos, copia indiciorum non nomine teſtium, communicantur reo*
13. *Contumacibus reis vel ſociis criminum ſit danda copia indiciorum?*
14. *Reo confitenti nedum copia eſt denegunda?*
15. *Dare copiam indiciorum eſt de ſubſtantia proceſſus indiciorum?*
16. *Graviſſima indicia quæ?*
17. *Graviſſima indicia ſunt vel facti vel juris*
18. *Graviſſima indicia omninò etiam ſunt communicanda reis.*
19. *Vera juſtitia compaſſionem, falſa indignationem admittit.*
20. *Tutius peccare eſt in abſolvendo quam condemnando.*

PRobatio † facti anima proceſſus eſt, *Damhoud. in pr. crim. c.* 157. & paria ſunt non eſſe id, quod intenditur, aut non probari, quod adſeritur, *Goed. conſil.* 93. Proinde viri † boni tacere, quam litigare malunt, quia probatio omnis eſt difficilis, *c. 21. q. 2.* hinc illud: 1 2

Conturbare cave non eſt pla. are ſuave.
Diffamare cave namq; proba: e grave eſt.

3 *Vent. de Valent. in part. litig. 1. cap. 3. num. 43.* Indicia † vero veluti facti vel facti quæſtio deducuntur in judicium, quibus probatis demum indicia ſuam operationem exſerunt, & vel capturam, quæſtionem vel condemnationem producunt, hinc indicia dicuntur quædam leviora, graviora aliqua & alia graviſſima. Leviora quæ huc non ſpectant uti nec graviſſima, capturæ faculta-
4 tem judici faciunt, neque † enim ſine diffamatione, fama vel indiciis ſtringentibus ejuſdem generis, captura decerni debet, ubi non jurata indiciorum probatio, ſed qualis qualis demonſtratio, judici fidem faciens, judicem indu-
5 cens, ut credat capturum delicti reum eſſe, quæ diſcuſſio † quidem judicii protocollis inſerenda eſt, ut appareat quo motu, quo jure magiſtratus ad capturam proceſſerit, *Fulgoſ. conſil. 1 5 Clar. 5. ſent. § fin. in pr. Crim. q. 2 . num. 3.* judices quippe prompti ſunt, *ait Clar. d. loc.* ad inquiſitiones formandas ſine præcedentibus indiciis, quos malos Aſſeſſores appellat, protervos & ignorantes judices canibus pejores. Quapropter jure evenit, quod perperam recepta inquiſitione generali proceſſus ſuperveniens evacuetur, annulletur. *Cum collapſa ruant ſubductis tecta columnis*, quam ſententiam veram eſſe, eamque totum mundum amplecti, *ait Cat inter conſil. varia crim. conſ. 5 lib. 1. Grat. conſil. 57. num. 11. lib. 1. Boſſ. de inquiſit.* appellat indicia hæc minora
6 iis, quæ ſufficiunt ad torturam, *Clar. dict. loc. num.* 3. ubi teſtatur, † quod ex vehementi ſuſpicione, quæ contra reum ex probabilibus reſultat argumentis, poterit contra eum formari inquiſitio licet talia indicia non ſint ejuſmodi, vel taliter probata, quod ſuper iis reus poſſit torqueri. Quæ recepta indicia
7 judex non tenetur communicare reo per copiam, multò minus † indiciorum copiam tranſmittere citato unà cũ citatione: ſufficit enim ut citato comparenti prælegantur vel referantur indicia hæc contra ſeſe ſpirantia vel captivo manifeſtentur eadem, interveniente quaſi quaſi examine, quod judex vel ſcriba judicii fideliter & legaliter ad acta publica tranſcribat, *vide Clar. d. loc. num. 3. ſupra cap. de examine reor.* Porrò *vide Clar. lib. 5 § fin. pag. mihi 23.. q. 4 . num. 8.* ubi ſtatuit, quod quidem non demum indicio, quæ judex recepit ſuper proceſſu informativo, niſi reo legitime citato & præſenti fuerint repetita, *Idem n. 11. pag. 23c* ubi rationes inducit, cur acta inquiſitionis generalis non ſint communicanda reo, neque hic obſtat *Conſtit. Car. V. artic.* 15. qui quomodo intelligi debeat, declarat *Gobler in explic. dicti articuli*, quo lectorem remitto. Neque obſtat *l. 18 § 9. ff. de qq.* ubi text ait. quod cum præſes de crimine eſt cogniturus palam facere debeat cuſtodiam, ne ii, qui defendendi ſunt, opprimantur ubi iis criminibus accuſatoribus &c. Reſpondet quidam & diſtinguit *Hipp. Bonacoſſ. in tract. com. opin. crim part. 2. pag. mihi* ... indicia capturæ & torturæ, de quibus ſeorſim diximus paulò ante. Sed ...

gitur

gnat, † *text. d. l.* 18. qui ut videtur, expreſſam mentionem facit indiciorum 8
ante capturam emergentium, ibi: *oportet ante diem palam facere, &c.* replico
textum agere de defenſione reorum ſolummodò, non de indiciorum copia
danda ante reorum capturam, hoc in genere diſponit & decidit textus, non
temere deneganda reis ea eſſe, quæ vice defenſionum adferuntur, ſive ante
ſive poſt capturam, ante vel poſt ſententiam defenſiones reorum allegentur.

Cæterùm indicia † gravia, id eſt, quæ poſt capturam loco congruo 9
vel ex generali indiciorum claſſe, vel ſpeciali ſede, imò ſive ex generali ſive
ſpeciali inquiſitionis corpore fuerunt deprompta & extracta, abſque ullo diſ-
crimine reis ſunt communicanda, *c. fin. §. ceſſante de hæret. in 6. c. qualiter clem.
2. §. debet. de accuſat. l. 2. ubi Dd. C. de edendo Bart. in l. fin. num. 8. ff. de qq. d. l. 18.
§. 9. ff de qq. Marſil. in l. 1. num. 5. ff. de qq. Clar. in pr. crim. § fin. quæſt. 49. Pa-
ris. conſil. 2. num. 155. volum. 4. Bonacoſſ. d. part 2. n. 445. text. in l. ſi non defendan-
tur, ff. de pœn. Bald. de Perigl. de qq. c. 1. 2. 3. & ſeqq.* Communi Dd. calculo com-
probatum eſt *ait And. Gail. 2. de pp. cap. 7. num. 6.* quod in criminalibus, quan-
do per modum inquiſitionis proceditur non ſolum copia indiciorum, ſed et-
iam nomina teſtium inquiſitor vel de crimine aliquo ſuſpecto, dari debeant,
cum termino competenti ad ſe purgandum & eluendum objectum, & ideò
abſoluto examine teſtium publicationem petere poteſt, ut ſe defendere &
exceptiones legitimas contra perſonas & dicta teſtium opponere queat. Pla-
nè copia † indiciorum reo denegatio nullitatem prægrandem involvit, cum 10
defenſio nedum ſit Diabolo auferenda, non prædoni, nec cuivis malefacto-
ri, qui ſe defendere nititur, *& Paſtoralis de ſent. & re jud. gloſſ. in d. c. ceſſante de
hæret. in 6.* Idcircò ut nullitatis charybdim evitent judices, ultro & ex officio
indiciorum communicationem reo decernere ſolent, *Clar. d. quæſt. 49. nu. 4.*
quod ut maximè locum habet, quoties rei fuerint homines ſimpliciores,
idiotæ & planè rudes, quibus non modo copia indiciorum, ſed advocatus
vel defenſor ex officio eſt adjungendus, *Clar. in pr. crim. lib. 5. quæſt. 49. nu. 4* [illegible]
ne innocentes opprimantur, *d. l. 18. §. 9. ff. de qq. l. ſi non defendantur, ff. de pœn.
Bonacoſſ. d. loc. pag. 445. Gail. dict. loc. num.* 1[illegible]. ubi atteſtatur, quod in notoriis
† quoque indiciorum copia ſit communicanda reis, quæ ſententiam decla- 11
ratoriam requirunt, *Clar. d. loc. Boſſ. de denunc. nu. 9. Villalob. in tr. comm. opin.
lit. I. num.* 22. ubi dicit: communem eſſe concluſionem Dd. Quòd reo copia
indiciorum ſit danda, quæ ſententia quoque in crimine † hæreſeos obtinet, 12
ubi quidem indicia, non verò teſtium nomina communicantur reis, hoc id-
eò accidit, ne in periculum incidant teſtes, reo potenti exiſtente. *gloſſ. in c. fin.
in verbo indiciis, de hæret. in 6.* quam cauſam ſtringere ait, *Clar. lib. 5. pr. crim.
q. 49. num.* etiam in quovis delicti genere, ubi potentiores ſunt rei facti ma-
leficiorum. *Idem d. loc. quæſt. 5. pag. mihi 153.* ubi decidit, quis ſit Regum vel
Principum in cauſis delictorum judex competens, neque tamen contuma-

 cibus

cibus reis indiciorum copia eſt danda latè & ſcitè, *Clar. d. loc. n. 6.* [illegible]
15 decidit hoc thema: Utrum & quomodo ſo[illegible] † cr[illegible], qu[illegible]
ſunt contumaces, alii captivi vel obedientes, qui ſe toties [illegible]
ſiſtere coguntur, copiæ indiciorum ſint communicandæ? Plane [illegible]
14 tentur favorem indiciorum editiones, † ut nedum reo confitenti denegan-
da ſit actorum vel indiciorum copia, multa enim exiſtere poſſunt, quæ contra
confeſſionem propriam jure allegentur, *Clar. in d. p[illegible] quæſt.* [illegible]
communicatione ejuſmodi agit, *Conſtit. Crim. Carol. V. art.* [illegible]
ſolche Kundſchafft verhöret iſt / ſoll es mit Eröffnung derſelben [illegible]
werden, nemlich wie de Kundſchafft vor [illegible] eines [illegible]
Perſonen die dieſer Sachen verſtändig [illegible] / ſo ſoll der [illegible]
nung derſelben Kundſchafft Tag anſetzen und Schrifftliche [illegible]
Schwerrede zulaſſen [illegible] *in tr. crim. tit. de conf.* [illegible]
15 de ſolennitate [illegible] † [illegible] entur indiciorum copiæ reis.
16 Denique [illegible] † indicia quantum [illegible]
17 demnationem & pœnam tendant [illegible] prævia [illegible] † [illegible]
[illegible] ſunt, non juris juxta, *l.* [illegible] *C. ad L. Juliam de adulter.* [illegible]
probata ſunt, inducentia probationem [illegible] *Clar.* [illegible]
quæſt. [illegible] *num.* [illegible] ita quoque publicanda admittunt contradictionem & defen-
ſionem reorum, quanto enim gravius eſt ſupplicium [illegible]
18 ſuſtinentes corporis duritie, nonn[illegible] † [illegible]
tardius hic procedendum, communicatis [illegible]
rum criminalium, [illegible] defendendi [illegible] *l. 18.* [illegible]
[illegible] eſt propter [illegible] rationem, [illegible]
19 [illegible] *quæſtiones 45.* [illegible] Vera † [illegible]
[illegible] *in* [illegible] *Cardin.* [illegible]
20 *cap.* [illegible] † tutius eſt [illegible]
[illegible] *num.* [illegible] *Hieron.* [illegible] *num.* [illegible]
[illegible]

CAPUT XXXIII.

DE EXCEPTIONIBUS CONTRA INDICIA

[illegible] & Defenſionibus reorum.

SUMMARIA.

1. [illegible]
[illegible]
[illegible]
[illegible]
2. [illegible]
3. [illegible]

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4 Exceptio [illegible] præscripta opponi poteſt.

5 Exceptio [illegible] quæque poteſt opponi.

6 Accuſatore [illegible] ſumere tenetur partes [illegible]

7 Exceptio [illegible] opponatur accuſatori [illegible] mici, qui [illegible]

8 D[illegible] exceptio [illegible] nunquam exſpirat [illegible] accuſatore.

9 Opponi poteſt quod procurator non [illegible] admittendus, quod [illegible] inimicus rei, &c. Corruptus, infamis, periurus.

10 Exceptiones ex cauſa [illegible] quomodo [illegible]

11 An & quando inquiſitio [illegible] [illegible]?

12 Iudex ſæpius [illegible] debet exceptiones [illegible] litem [illegible]

13 [illegible] perfectam habeat [illegible]

14 Exceptiones [illegible] depromantur ab [illegible] vel ex propriis [illegible]

15 [illegible] quod indicia ſint [illegible]

16 Verum [illegible]

17 In [illegible] ſunt [illegible]

18 Iudex arbitrium ſuum [illegible] ratione, quam communis Doctorum ſententia [illegible].

19 Indicia [illegible] gravia & [illegible] clariora.

20 Unum indicium remotum [illegible] non [illegible] quæſtionem [illegible] ſpecialia, [illegible] indicia.

21 [illegible] expreſſa [illegible] ad [illegible] um.

22 [illegible] rectà opponi [illegible]

23 [illegible] per [illegible] contrario rum [illegible]

24 [illegible] per [illegible] rum

25 [illegible] per [illegible] impoſſibilem?

26 [illegible]

27 An [illegible]

28 [illegible] dictum?

29 [illegible]

30 [illegible]

31 [illegible] plicis.

32 [illegible] b[illegible]

33 An [illegible] ſtantur?

34 [illegible] fama excidant.

35 Non [illegible] vius [illegible]

36 [illegible] Doctorem [illegible]?

37 Quomodo ex [illegible] tur exceptio [illegible]

38 [illegible] bannita [illegible] debet.

39 [illegible]

40 [illegible] Domini [illegible] re.

41 An [illegible] Dominum [illegible] ſit?

42 Quæ perſona [illegible] opponatur ex[illegible] quos [illegible] habeant

43 Quomodo exceptio pr[illegible] r[illegible] ?

44 [illegible] furor.

45 Exceptio furoris, [illegible] dendæ?

46 [illegible] noſtra [illegible] d[illegible]?

47 [illegible] a [illegible]

48 [illegible] dum.

49. *Diſcurſus de incubo & calcamaro exhibetur*

50. *De exceſſibus obſeſſorum diſquiritur.*

51. *Quomodo exceptio ab inductione affectuum bonorum formetur?*

52. *De amico præſumitur omne bonum.*

53. *Conſanguinei jam reperti in loco ſuſpecto, non præſumuntur fornicaſſe*

54. *Amicus vel conſanguineus ſpem ferens periclitanti & ſubinde occidenti adverſarium, non præſumitur habuiſſe animum occidendi*

55. *Exceptione prædictâ uti poſſunt heredes defuncti*

56. *Non ſunt eadem conſanguinei qui cum improbo conſanguineo commorantur.*

57. *Exceptio ignorantiæ quomodo opponatur.*

58. *Ignorantia juſta ſive injuſta excuſat à pœna corporali*

59. *Ignorantia juramento probatur.*

60. *Iura gentium & notoria non excuſant ignorantiam*

61. *Cum facta excludunt exceptionem ignorantiæ*

62. *Contradicentia, mendacia arguunt*

63. *Exceptio ceſſantis doli eſt efficax*

64. *Poſſibili veritate in eſſe poſita nulla datur fictio*

65. *Furti conventus allegare poteſt quod furandi voluntate non contrectaverit rem alterius.*

66. *Quomodo læſæ majeſtatis reus excipere poſſit?*

67. *Dominus ſtatus dividuus eſt, qui admittit diſtractionem*

68. *Quando pœnam capitalem incurrat ille, qui judici dat alapam?*

CÆterum examinatis teſtibus ſuper indiciis, & copia reo datâ, poſt publicationem atteſtationum factam, exceptiones & replicas in ſcriptis judex admittat, *Conſt. Crim. Carol. V. artic. 72. Speculat. de teſtib. in §. ſatis utiliter, &c.* quâ in parte † conceditur captivo, ut cum Advocatis & amicis ſuis libere deliberare & conſtituere poſſit, quid contra inquiſitionem ſpecialem, indicia ſibi communicata, dicta & perſonas teſtium ſit opponendum, quomodo defendendus reus, ne in lictoris manus incidat, & probroſos torturæ dolores ſubire cogatur, *d. Conſtit. Crim. artic. 73. ubi Gobler. & commentatores paſſim.*

Exceptiones autem, quæ opponi poſſunt hoc in loco vel generales ſunt vel ſpeciales. Generales: præſuppono accuſationem, in quam indicia & officium judicis inquiſitionale incurrit ut quoties citatio non fuerit legitimè expedita, vel ſub eadem concurrant vicia & nullitates tam quoad incompetentiam magiſtratus, quam ejuſdem recuſationem, aliaque reſpectu partium

2 emergentia dubia, *qua de re ſupra de citat.* Cæterum quod † judex recuſari poſſit in cauſis indiciorum capitalibus, nullum admittit ſcrupulum, modo de calumnia juretur & ſuſpicionum cauſæ in continenti probentur, *arg. l. 15. §.*

3 *7. ff. de re judic.* Quia † exceptiones litis ingreſſum impedientes in genere debent probari in continenti, *Oldendorp. Enchir. except. pag. 11.* quæ licet & celeriter probari non poſſunt rejiciuntur poſt litem conteſtatam, *l. 13. §. 2. ff. ad SCtum Trebell.* Quocirca hæc exceptio hactenus non oppoſita, hoc in loco examinari poteſt, ſed ſummariè.

4 2. Opponi † poteſt hoc in loco præſcriptæ accuſationis exceptio, quæ ut litis ingreſſum impedit, ita efficaciter allegari poteſt in hoc judiciorum puncto,

puncto, *Clar.* [illegible] *in* [illegible] *pag.* [illegible] ſcienaum eſt, quod [illegible] annotatum [illegible] *querelam. C.de* [illegible] *num.* [illegible] & ita in [illegible] quidam [illegible] de [illegible] medio ſupra [illegible] communis [illegible] fuiſſe per [illegible] Conſiliarium de [illegible] *Papon de Arreſt. lib. 24. tit. 2. art.* [illegible] In [illegible] ſyndicatu terminatur & præſcribitur [illegible] quinquennii ſpacio, *Clar. in pr. crim. § fin. lib. 5. quæſt.* 71. *n.* 4. *Trent. 2. diſput.* [illegible] ad bona condemnati publicanda, [illegible] quinquennium à die mortis defuncti declaratio confiſcationis [illegible], *Clar.* [illegible]

3. Opponi † poteſt exceptio [illegible] & [illegible] enim judicia debent eſſe in [illegible] cum [illegible] bus cauſis audiatur actor [illegible] expenſis, & modo [illegible] *Joan. Maurit. in tr. de reſtit. in integ. paſſim,* [illegible] rum materia & univerſa accuſandi provincia [illegible] fit receptam, [illegible] *qui de crimine, num.* 8. *C. de accuſat.* quem allegat, *Capit.* [illegible] vertendum [illegible] utrum ne aliter obſervet curia ſtylus & conſuetudo [illegible] ſtylus pro lege cuſtoditur, *B.* [illegible] *de regno* [illegible]

4. Opponi poteſt mors accuſatoris, [illegible] accuſatio regulariter non tranſeat in heredes, *text. l. 1. C. ſi* [illegible] *reus mort. fuerit,* &c. ubi [illegible] annotandum eſt, quod [illegible] quæ tam [illegible] quoque [illegible] A [illegible] paſſim [illegible] Dd. Quod [illegible] ex officio [illegible] 6 ſam. *Part.* [illegible] *de accuſ.* ne delicta [illegible] *C. de* [illegible] que [illegible] *Clar.* [illegible] facultatem, [illegible] ex generali conſuetudine [illegible] per inquiſitionem ſive exiſtat accuſator ſive non. Cæterum [illegible] defuncto [illegible] quivis, modo intereſſe [illegible] doceat accuſationem inſtitutam [illegible] & continuare poteſt, modo [illegible] dies quadraginta compareat [illegible] 7 fuerit, *Bart. in d. l. 3. §* [illegible] *num. 6. ff. de accuſat.* [illegible] poteſt exceptio [illegible] nihil intereſſe [illegible] [illegible] Sic † [illegible] dubium poſitum eſt, quem [illegible] 8 [illegible] perſecutiones accuſatore mortuo [illegible] *Clar.* [illegible] *n.* 14.

5. Opponi [illegible] poteſt exceptio non admittendi procuratoris, [illegible] criminalibus [illegible] non admittitur, *ſupra* [illegible] *procurat. in cauſ.* [illegible] *Oldend. d.* [illegible] *pag.* 13. [illegible]

6. Opponi poteſt [illegible] cur- [illegible] infamis [illegible] perſona, que [illegible] *ſupra* [illegible]

7. Poſſ-

10 Nullitas † proceſſus opponi hic poteſt [illegible] ſpecie de [illegible] defenſionis reorum diſcretus (1.) Quod inquiſitio generalis non præcedente fama inchoata (2.) [illegible] legitima facta (3.) [illegible] media & [illegible] judicis vel partis decreta (4.) non ſervato juris ordine, qualem requirit criminalis cauſa, proceſſum eſſe apparet. (5.) Quod [illegible] ſine indiciis, confuſa inquiſitio generalis cum ſpeciali, vel ſpecialis [illegible].

11 [illegible] &c. *Clar. in d.* § *fin. pr. crim. quæſt.* [illegible] *num.* 1. [illegible] † [illegible] ſit [illegible] generali, ſequi poteſt condemnatio, quoniam [illegible] non torquendum, multo minus puniendum [illegible] comparata, *vide Tiraquel. de pœn. cauſa* 5[illegible]. *num.* 3. Quanquam in cauſa Syndicatus ex [illegible] inquiſitione poſſit ſequi condemnatio, [illegible] dilationes & facultates probatoriæ defenſionales & [illegible] ad ſententiam procedendi, *Clar. d.* [illegible] *num.* 5. [illegible] generalis inquiſitio ſpecialem [illegible] occupat & aſſumit [illegible] *Tiraquel. d. loc.* (6.) Quod ſine litis conteſtatione [illegible] & figura judicii ſit actum in judicio, nullitates proceſſus [illegible] defenſiones reorum connumerantur, *Clar. d.* [illegible] *num.* [illegible] eſt defenſio quæ oritur ex illis exceptionibus, quæ concernunt nullitatem proceſſus, &c.

8. [illegible] poſſunt exceptiones [illegible] proceſſus nullitatem [illegible] reſpectu judicis [illegible] vel Fiſcalis ſubjectæ, [illegible] vel non obſervatæ à reo, [illegible] quia rudis & idiota eſt, nec inſtructus Advocato [illegible] defendi Advocatum [illegible] defenſio, *Claſſ. Crim.* [illegible] 73. & *ſeqq.* Neque [illegible] exceptiones dilatoriæ ante litem conteſtatam [illegible] opponendæ, quoniam [illegible] integra, *l.* [illegible] *C. de exception.* [illegible] Sed exceptio [illegible] probatio [illegible] exceptionem [illegible] *Menoch.* [illegible]

12 [illegible] *extr. de except.* [illegible] quo [illegible] *in cap. ex conqueſtione* [illegible] exceptio dilatoria [illegible] ſucceſſivum contractu [illegible] (4.) Si [illegible] intervenit pro defenſione [illegible] ſanguine & affectione defenſionis [illegible] (5.) Sic exceptio [illegible] opponitur poſt litem conteſtatam, [illegible] *C. de judic.* [illegible] Exceptio [illegible] dilatoria quoque opponitur. [illegible]

[illegible]

alias judex admittere tenetur poſt litem conteſtatam exceptiones dilatorias, quandocunque utilitas publica id requirit, vel cauſa eſt favorabilis, *Paul. de Caſtro in l. ita demum. C. de procur. l. quos prohibet, ff. de poſtulando* cum enim defenſiones reorum quocunque in parte litis poſſunt efficaciter opponi in cauſis criminalibus, etiam poſt ipſam ſententiam, quidni ante capturam ſigatoriam quæſtionem, ubi res eſt adhuc integra & ſana, *Bald. de Perigl. in tr. de qq & tort. cap. 7. nu. 7.* adde quod † omnis exceptio vim habeat perpetuam 13
defendendi, quæ autem temporaria ſunt ad agendum, ea ſunt perpetua ad excipiendum, *l. purè, ff. de dol. mali & met. except. vide Oldendorp. in Enchirid. except. pag. 12.*

9. Speciales † exceptiones quantum concernit, depromi illæ de- 14
bent ab ipſo examine teſtium, (1.) quod judex vel examinator ſit legum ſtatutorumque ignarus, cui incubuerit prudentioribus committere examen teſtium ſuper indiciis ſecundum diſpoſitionem, *artic. Conſtit. Crimin. 62.* ibi: Dieweil aber an verſtendiger Kundſchafft Verhörer viel gelegen iſt / etc (2.) Quod non proceſſerit ante examen vel ſub ipſo actu examinis, legitime & decentèr, *arg. d. Conſtit. 62. & 63.* (3.) Quod dicta teſtium ſint generalia nec concludentia, obſcura, & incerta, diſcrepantia, ſingularia, contraria, falſa, nulla, qua de re eximius ille tractatus Farinacii de teſtibus, qui certe parem in mundo non habet, tanti ponderis & eruditionis, quo lectorem remitto. (4.) Quod teſtes ſint inimici, vel reſpectivè amici, parentes, affines, conſanguinei, patroni, domeſtici, corrupti, falſi, perjuri, infames, banniti, mentecapti, ſurdi muti, minores, impuberes, &c. de quibus remiſſivè *Farinac. in illo tractatu & Doctores 26. quorum ſcripta congeſta ſunt in uno volumine Nepot de Monte Albano. Jacobi Butrigarii. Bartoli cum addition. Diplovataтii, ejuſdem Bartoli a Saxoferrat. cum addit. Anton. Ægidii Baldi Angeli. Friderici Schenck. Nelli a S. Geminiano. Franciſci Curt. And. Barbat. Stephan. Aufrerii, Tyndar. Alber. de Malet. Lanfranc. de oriano cum addit. Benedicti de Vadis & Celſi. Hugonis Diſſlutt, Mar. Socini Marantæ Crotti cum addit. Pet. de Moncad. Pet. Rebuffi Ægidii Boſſ Damhouder. Campegii, & Juſti Reuberi*, alias communes hi circumferuntur verſiculi de reprobatis teſtibus:

Conditio ſexus, ætas, diſcretio fama
Et fortuna fides, in teſtibus iſta requires.
Porrò in eandem ſententiam.
Judice damnatos infamia reddat ubique
Quod vir diripiturq; injuria, furta, doliq;
Actio mandati, tutela depoſitiq;
Directa atque pro ſocio communis habetur.

Nepos de Monte Albano in d. tract. de teſtib. num. 27. in princ. (5.) Quod † 15
in di-

indicia uni generalia, nec ſufficientia ad torturam, non ſufficienter probata, plane quod teſtis de delicto immediate deponens ſit expers fidei, &c. ratio eſt, quoniam indicia mere generalia, uti ad claſſem inquiſitionis generalis ut plurimum ſpectant, *qua de re ſupra cap 3. & ſeqq. & part. 1. de iudic paſſim.* Sic in officina indiciorum ſpecialium, vel quod magis, inquiſitionis ſpecialis parum vel nihil operantur, nec obſtat, quod † indicia ſint arbitraria, *Clar. in pract crim. §. fin. quæſt. 20.* ibi: hoc præmiſſo ſcire debes, quod ſecundum omnes in materia indiciorum non poteſt dari certa doctrina, ſed totum relinquitur arbitrio judicis, qui ſecundum qualitatem perſonæ & delicti & demonſtrationum ſeu ſuſpicionum judicabit indicium eſſe ſufficiens vel non. *Idem d. q. 20. num. 1. & 4 quæſt. 26. num. 1.* ibi: tota indiciorum materia eſt arbitraria,
16 (see margin)

17 *& quæſt. 64. verſ dixi quoque, &c.* Item quod † indicia ſint infinita relata, *Conſtit. Crimin. Carol. V. art. 17.* ibi: Seint nicht müglich alle zubeſchreiben/ *& art. 2 ibi:* Wann nicht müglich iſt alle Argwoenigkeiten vnd verdechtige Fälle zubeſchreiben etc. Reſpondeo. Quanquam judex arbitrari poſſit, quæ & quanta indicia arguant delicta, ut ſubinde quæſtio decerni poſſit, *Menoch. de*
18 *arb. jud. 2. caſ 270. num. 5.* interim tamen dubium non eſt, quin † judex animi ſui motus, in hoc arbitrii genere, accommodare teneatur rectæ rationi, quam communis DD. opinio involvit, quapropter *Menoch. d. loc. numer. 5.* ait: arbitrium judicis in hoc paſſu conſentaneum eſſe debere juri & æquitati, jure ante expeditum eſt, ut indicia ſint probabilia & veriſimiliora, *l. 8. & 1.*
19 *Cod. de qq.* gravia † & luce meridiana clariora, *Bald. conſil. 259. lib. 1. Cravett. conſil. 6. num. 12. & conſil. 66. n. 1. Conſtit. Crim. Carol V. artic. 23* ibi: Eine jede anugſame Anzeigung/ ſoll mit zweyen guten Zeugen bewieſen werden. Sed ad quid opus lege ſcripta, ſiquidem judex pro arbitrio vagari queat in materia indiciorum. Hæc itaque eſt ſententia Clari ſicque eadem explicanda, ut in caſu emergenti, quo lex ſcripta vel conſtitutio pragmatica ſilet, demum ad judicis arbitrium ſit recurrendum, neque enim ita lex ſcribi poteſt, ut omnes caſus & articuli ſigillatim comprehendantur, ſed cum in aliqua cauſa ſententia manifeſta eſt, is, qui juriſdictioni præeſt, ad ſimilia procedere, atque ita jus dicere debet *l. 12 ubi Zaſ. & Dd. ff. de ll.* Deinde quænam indicia quæſtioni ſufficiant, ex traditione Dd. communi, lege ſubticente, depromendum
20 eſt, *qua de re eidem Menoch. d caſ. 270. num. 22.* ubi ait. Quod † indicium generale vel remotum nunquam producat quæſtionem, niſi una concurrat indicium ſpeciale vel propinquum, *Bart. & Marſil. in l. fin ff. de qq. Conſtitut. Crim. Carol. V. artic. 27.* ibi Derſelbigen argwoenigen Theil/ oder Stück iſt keines allein zu tödlicher Anzeigung genugſamb/ wo aber ſolcher argwoenlicher Theil oder Stück etliche bey einander/ &c. 2. Denique quod teſtis de delicto immediate deponens, omni exceptione major eſſe debeat, extra omnem eſt
21 controverſiam poſitum, *vide part. 1. de indic. cap. 4.* Ut † ea propterea in caſibus

bus in expreſſis non ſit opus arbitrio judicis, quia in [illegible] locus eſt conjecturandi, quin quod arbitrium judicis [illegible] quoties accepietur, ut videre eſt penes, *Menoch. de arb. jud. quæſt.* [illegible].

10. Cæterum, † poſthabitis exceptionibus illis omnibus [illegible], ſi quidem ita ſibi placuerit [illegible] ad defenſionem [illegible] 22
teſt, ex ipſis ſcilicet cauſæ [illegible] bus depromptam, exempli gratia [illegible] homicidii arguitur, qui paratus eſt illo tempore quo illud patratum eſt, ſe abfuiſſe illo loco & tempore, quo cædes commiſſa [illegible], &c. Ita enim comparatum eſt regulariter, ut exceptiones reorum defenſionales, quibus injuſtitia & iniquitas actoris confeſtim manifeſtari poſſit, [illegible] litis ingreſſum quoque queant opponi, *l. vir bonus, ff. jud.* [illegible] *matur, §. ſi patris, ff. de bon. libertor.* quanta itaque æquitate, & [illegible] de cauſa admittatur reorum in hac proceſſus criminalis parte, cum [illegible] ſit res atrociſſima & periculi plena, *l. 1. § 23. ff. de* [illegible]. Derivari autem poſſunt defenſiones ejuſmodi ex ipſis maleficiorum ſingulorum fontibus per [illegible] nem contrariorum, diverſorum vel compatibilium, incompatibilium & abſurdorum permiſſorum, neceſſariorum, caſualium, ætatis, honoris, ſexus, ſtatus, affectuum pravorum vel bonorum, ignorantia doli ceſſantis, reſpectus diverſi, &c. (1.) Contrariorum † ſic habenda eſt ratio inductiva, ut reus, 23
qui inficiatur delictum, ſe rectè oſtendat probaturum contrarium, *l. qui* [illegible] *tem, C. de pœn. Boſſ. in tit. de defenſ. reor. num.* 7. qui modus per omnia paſſim tranſit maleficia. (2.) Diverſorum † ut cum quidem probatum eſt maleficium, vel probari id poterit, reus tamen allegat & probat [illegible] diverſi, 24
quod eum a cauſa delicti & pœna ordinaria poſſit eximere, *Boſſ. in d. tit. de defenſ. reor. num* 1[illegible]. utpote ponit & demonſtrat reus, offenſum non ex vulnere ſed ex malo regimine uti loquuntur, eſſe mortuum, *Bart. & Dd. comm. in l. admonendi, ff. de jure jur.* vel in tumultu & rixa vulneratum non ex vulnere a reo immiſſo, ſed ab alio, inflicto deceſſiſſe, &c. *argum. l. 11. §. 2. 3. 4. ff. ad L. Aquil. Boſſ. dict. loc. num.* 12. ubi adſerit, quod in hoc negotii genere probatio dubia & non admodum concludens admittatur, nec non recipiantur teſtes alias reprobati, ut conſanguinei, fratres, (3) incompatibilium, † ut 25
cum reus probare nititur, vel jam probavit, ſe tempore commiſſi delicti fuiſſe peregre profectum, vel abfuiſſe domo, cum extra ædes rei maleficium patratum dicitur, ſe in miſſa, templo, curia, foro, balneo extitiſſe eo momento, quo delinqueretur, *Boſſ. d. loc. num.* 15. *& ſeqq.* qua adſertione rei probata, tacitè evertitur atteſtatio contraria & [illegible], niſi teſtes in ſpecie eſſent examinati ſuper hora & die commiſſi criminis, quæ circumſtantia utplurimum ſolet poni, qua omiſſa vel neglecta ſibi imputet accuſator vel Fiſcalis, qui non cautius mereri & poſitiones accuratius formare didicit, proinde dicimus: Quod † teſtes debeant removere actum a ſenſu, non ſen- 26

 ſum

ſum ab actu, &c. *Paul, de Caſtr. in l. 2. Cod. de bon. poſſ. contr tabul.* quò ſpectat à Godelm. relata hiſtoria *in diſp. Roſtoch. de Mag. & veneſ.* ariolo quodam ſuggerente judici, quod omnes veneficæ certo in loco civitatis eſſent conventuræ, inter quas & conjunx judicis foret, &c. ille convivas cóvocat, iisq; committit, ut certa de cauſa retinerent ad menſam uxorem ſuam, ne unquam digrederetur, judex ab ariolo in locum ſaltatorium noctu deducitur, ubi inter alias ſaltatrices reperit conjugem. Sanè falſa hæc arioli demonſtratio, & merum Sathanæ ludibrium hinc fuit detectum, cum corpus humanum non poſſit eſſe in diverſis locis eodem momento, uti de vivo Ambroſio ſomniare ſo-
17 lent Dd. † quod virtute divina præditus & Romæ & Mediolani eodem mane miſſam celebraverit, *vide Boſſ. in d. tit. de defenſ. reor. num. 25.* nec non de Joanne Teutonico, cujus cineres Halberſtadii ſepulti jacent, Mago quidem, ut
18 refert *Joan. Wolff. 2 lect. mem. pag. 925.* (4.) Permiſſorum: † Ut quia occidere licitum bannitum, *vide Boſſ. in d. tract. tit. de bannit.* hæreticum, *auth. Gazaros, Cod. de hæret. Idem Boſſ. in tit. de defenſ. reor. num. 63.* transfugam, rebellem, hoſtem, niſi dolus vel culpa poſſit imputari reo, *vide Boſſ. eundem egregiè dd. locis. de defenſ. reor. num 68 & de bannit. quid amittant per tot.* adulterum, quem pater occidere jure poteſt. Prolixè nos *part. 2. de adult.* nec non maritus, quoad pœnæ mitigationem, *Boſſ. d. loc. Tiraquell. de pœn. cauſ. 1.* (5.) Neceſſario-
29 rum, † quò ſpectat exceptio moderatæ ſeu inculpatæ tutelæ, ubi duo potiſſimum ſunt inſpicienda judici, ut ait *Oldendorp. in Enchirid. except. pag. 101.* & omnibus, qui in hujuſmodi exceptionibus vel diſceptationibus verſantur, alteruter violentiam exercere cœperit, is enim ſemper hac exceptione repellitur, quæcunque ſecuta fuerint damna adeoque homicidia, *l. quoniam, C. ad L. Jul. de vi publ.* alterum omnium maximè deliberandum eſt, an ille, qui hanc exceptionem allegat, modum adhibuerit inculpatæ tutelæ, hoc eſt talem defenſionem ſui vel ſuorum, ut culpa ei nulla poſſit imputari, quod modum defendendi exceſſerit, modus conſiſtit in tribus, (1.) ut non niſi armis vis & inſultus factus, armis depellatur, *l. 3. §. eum, ff. de vi & vi armat.* (2.) Ut defenſio fiat in continenti, *dict. loc. 1.* (3.) ut ad defenſionem non ultionem & vindictam fiat, *l. ſcientiam, ff. ad L. Aquil.* Sed nec generalis deſcriptio ſat ſuperque videtur explicata, ſatius eſt, quanquam ſine modo præſcripto nihil rectè fiat, *l. divortio facto, ff. negot. geſtor. l. ſed etſi. §. 1. ff. de uſufruct.* ubi textus ait modum eſſe tenendum, ne temeritate vel ſævitia is corrumpatur, hinc illud:

Eſt modus in rebus ſunt certi deniq; fines
Quos ultro citroq; nequit conſiſtere rectum.

Totam hanc juris cauſam arbitrio judicis committendam eſſe. Sed ne in latiſſimo hoc juris campo ultra fas immorari cogar, remitto lectores ad *Bart. Caſtr. & Dd. in l. 3. ff. de I. & I. & noviſſimè Berlichium, p. 4. concl. de defenſ. neceſſ.* qui accuratiſſimè hanc materiam pertractat.

Exten-

Extendi quoque hic locus poſſet ad furta, latrocinia, quæ neceſſitatis
cauſa urgente, facta proponuntur, quæ quouſq; pœnæ mitigationem præ ſe
ferant, remitto proinde lectores *ad Tiraqu. de pœn. cauſ.* 33. (6.) Caſualiū: † ut 30
cum non ex propoſito ſed caſu delictum commiſſum eſſe dicatur, quod de-
fenſionem quoque præbet, *l. abſentem, ff. de pœn. cap. lator, ext. de homicid.* ni-
ſi culpa quædam adſcrib. poſſit reo, culpa autem purgatur eo ipſo, quoties ab
initio actus erat lege permiſſus nec culpabilis, quanquam ex accidenti non-
nihil intercedat, quod culpæ potius quam mero facto poſſet imputari, *Boſſ.
in d. tit. de defenſ. reor. num. 67.* remitto hic ſimiliter lectorem, *ad part. noſtram
ſecundam. de homicid. caſual.* (7.) Ætatis: † ut cum allegatur minorennitas, *l.* 31
*36. §. 1. ff. de minor. l. 9. §. 2. ff. eod. Bart. in l. ſi adulterium, §. 1. ff. ad L. Jul. de adult.
Tiraquell. de pœn. cauſa.* 7. cum multis ibidem allegatis Dd. exiſtimantibus
exceptionem minoribus tribuendam eſſe ex officio, iisque pœnam flagitio-
rum minuendam. Proinde priſca veniæ petitio & conceſſio delictorum, *Ti-
raquell. d. loc. vide part. 1. de indic. cap.* 2. plerumq; verò inter minorem doli
capacem & proximum pubertati diſtinguunt & minorem nullius doli con-
ſcium ac non propinquum ætati puberi, *text. inſignis in l. 44. ff. ad SCtum Syl-
lan. vide Joan. Goed. in tr. de contr. & comm. ſtip. conſclus. 12. cap. 7.* (8.) Hono-
ris: † ut cum nobilis, Doctor, eques, miles in dignitate habitus deliquit, 32
allegans privilegii exceptionem, adminiculante cauſa quali quali, quæ ex-
culpare queat facinus viris egregiis imputatum, quod enim diverſimode hoc
in paſſu juris conſtitutum ſit res eſt planiſſima, *l. 6. ibi. pro qualitate per-
ſonæ & in fine ante, §. 1. ibi: ſi honeſtiori loco natus. l. 4. §. 1. ibi: ſi ſordidiores erunt,
& l. fin. §. 1. ibi: ſi humiliori loco ſint, ff. de incend. ruina naufrag. &c. l. fin. ibi:
humilioris quidem fortunæ, &c. ff. de ſepulcr. viol. l. 1. §. 3 ff. de abigeis, l. 1. de fur.
balnear. l. 1. & l. fin. ff. de effractor. l. 2 ff. de term. moto, ubi Bart. dicit:* pœnam fu-
ſtium & verberum à nobilibus eſſe alienam, *arg. l. 1. §. fin. & l. 3. l. pen. ff. ad L.
Cornel. de ſic. cap. Paſtoralis, de off. deleg. & c. fin.* ibi: volentes tamen parcere di-
gnitati, &c. *ext. de pœn. Alber. de Roſat. in l. 6. §. 8. ff. de offic. præſid.* ubi ſtatuit:
Quod nobiles debeant deportari ex eo delicto, quod alias in genere pœnam
capitalem infert, quam ſententiam non pauci adeò ſtringere contendunt,
ut † quanquam ſtatutum loquatur, nullam pœnæ remiſſionem ex quocun- 33
que delicto reum conſecuturum, illud tamen ad nobilem delinquentem non
ſit extendendum, *cap. 2. de maled.* ubi Hoſt. in verbo miſericordiam, *& Pa-
norm. numer. 5.* multo minus laqueo ſuſpendendum nobilem eſſe ſtatuit, *in
rub. ext. de off. jud. deleg.* vide prolixè *Tiraquell. de pœn. cauſa 31. num. 3. 4. 5. &
ſeqq.* Dixi ſupra quod cauſa quadam adminiculante, hæc privilegia ut maxi-
mè operentur, illa verò inde fundanda, & ex principiis ejuſmodi ſtruenda
erit, quæ dolum & propoſitum delinquendi excludunt, cum alias dolum eva-
cuat etiam cauſa fatua, quæ regula ut maximè in contractibus ſtringit, du-

bium tamen eſt, quin pro re nata quoque in cauſis maleficiorum ſuum faciat officium cumprimis, innocentiæ & integritatis argumentis pro reo militantibus, nulla enim indicia † tanti ſunt ponderis, quæ vitæ anteactæ bonitas & fama excellens ſuperare non poſſit, *vide Brun. de indic. in princ.* taceo: in quantum nobilitatis ratio habenda ſit in cauſa homicidii, ubi Nobilis a plebejo laceſſitus, manu pulſatus & ne quæ graviora in eum dilabantur, commotus arma ſtrinxerit contra laceſcentem, eoque adactum injuriis, ut dolore juſto interfecerit plebejum, *Ferdin. Vaſqui.* 1. *illuſt. quæſt.* atque hæc di-

34 tibus, nulla enim indicia

35 verſitatis ratio in caſu converſo inde etiam dependet, quod plebejus † offendens vel occidens Nobilem, Doctorem vel equitem longè atrocius puniatur, quam ſi ſui ſimilem offendiſſet, jugulaſſet perelegant er, *Carer in pract. crim. pag.* 117. 118. *Petr. Rebuſſ. in tr. con. ordat. pag. mihi.* 109. ubi dicit: Quod plebejus Advocato regio manum inferens igni concremetur, *Carer*

36 *in pract. crim. d. loc. pag.* 118. Quod † Nobili vel Doctori alapam dans plebejus manu, quâ percuſſit, mulctetur, *Idem d. loc.* vel pro gravitate cauſæ ultimo ſupplicio afficiatur, *Menoch.* 2. *arb. q.* 7. *caſ* 268. *Berlich. p.* 4. *concluſ. pr. concluſ.* 61. *num.* 101. hinc graviſſima illa pœna legis Juliæ majeſtatis, *t. t. ff. ad l. Jul. majeſt. l.* 3. *C. eod.* Planè hæc ſententia etiam viros egregios juvat, ne quæſtionibus & torturis ſubjiciantur uti quivis plebei & viliores homines, *quâ de re infra.* quæ & alia quoad defenſiones reorum omninò pro re natâ

37 attendantur. (9) Sexus: † ut cum mulier delicti rea adducitur, quæ ut mulier inde defendi poteſt, quod pudoris in ius habeatur ratio. *l.* 1. *C. de off. divers. jud. l.* 1. *§ ſexum, ff. de poſtul. l. quintus. § fin ff. mandati*, hinc mulier propter fractam pacem publicam ad inſtar aſſeclarum virorum non declaratur in bannum regulariter, *Gail.* 1. *de pp.* 1. *num.* 36. nec pœnis ll. ordinariis coërcetur, niſi in delictis exceptis, inter quæ ſunt veneficia, incãtationes huic ſexui admodum familiares, quem uti ſeduxit in Paradyſo hoſtis infernalis, ita non ceſſat inſidiari illi poſt lapſum, videns eum molliorem & ad lapſum procliviorem viro exiſtere, *arg. c. quod propoſuiſti*, 32. *quæſt.* 7. *cap. indignè tur*, 22. *quæſt.* 6. *l.* 38. *§.* 1. *&* 5. *ff. ad L. Jul. de adult.* allegari hic ſolet verſiculus, *Virgil. lib.* 2. *Æneid.* ibi:

——— *Nullum memorabile nomen*
Fœminea in culpa eſt, &c.

Sic Aurelianus Zenobiam Reginam, à quâ tot contumeliis & prælis provocatus & laceſſitus erat, noluit occidi, non tam ob inſignem ejus magnitudinem & facta heroica, *de quâ re Anton. de Guevara* multa præclara recenſet *in epiſt aur. lib.* 2. quam ſexus reverentiam & pudorem, *And. Gail. d. loc n* 38.

38 Exinde † evenit, quod mulier banno demũ pulſa, impunè adulterari non poſſit, *Idem ex Claro in § homicidium. num.* 5. *d. loc.* prout ſingulari antiquitatis integritate, cum venderentur ancillæ, ſtipulabantur venditores, ne proſtitue-

ſtituerentur, *l.1.C.ſi manc.ita ven.ut præſtit. &c.* (10.) Status: † ut cum Do- 39
minus a ſervo, patronus a liberto, pater a filio in jus & judicium criminale
vocatur, *arg.l.13.& 14.ff.de in jus vocand.* quanquam verò Conſtit Juſtiniani
ad Ælium Martian. Beticæ Pro Conſulē ſervis non tam jus aſylorum, quam
quærela in factum detur contra dominos nullâ prævia veniæ petitione, *§.fin.
Inſt.de his qui ſui vel alien.jur.ſunt*, interim tamen app[ar]et † nullibi ſervis 40
licuiſſe dominos capitaliter deferre *vide part.1.cap.*88. Liberti conditio qui-
dem ſervitutis priſtinæ eſt expers, interim autem par operarum præſtatio, re-
verentiæ & ſubjectionis ab eo requiritur, quam ſervi debent Dominis, *l.4.l.
22.§.2.ff.de oper.libert. l.1.de jure Patron.l.1.2.3.ff.de obſeq.par. & patr.præſt.*
Porro ne filius accuſator vel delator patris exiſtat, & poteſtatis & reverentiæ
paternæ ratio dictitat, *arg. d.l.13.14.l.1. & 2.ff. de obſeq.par. & patr. præſtand.*
Porrò ad Vaſallum [e]quo[que] extendunt non pauci hanc prærogativam, quia is 41
liberto æquiparatur, *Eberhard.in top.in loc. à libert. ad Vaſall.pag.* 173. ubi
cautelam tradunt vulgò, quod in factum concipienda ſit quærela, quæ infa-
miam vel pœnam corporis afflictivam præ ſe ferat, quandoquidem famæ
propriæ vel propinquorum ſalus, vitæ periculum & Re[s]publ. ſcandalum hic
intercedit, ratio juris ita conſtituti eſt, cum in civilibus nedum admittatur
actio niſi venia impetrata. *Dd.paſſim in d.l.1, licet Mynſing.4.obſerv.29.*con-
trarium ſtatuat, *Zaſ.in d.l.13.* dicit: in uſu non eſſe conſtitutionem illam ex
Modeſtino JCto *in d.l.13.* relatam, teſtatur tamen Vaſallum aliquem ſe præ-
ſente refutaſſe feudum, ne parceret domino, &c. ut ut ſit, res eſt expedita ex
iis, quæ ſupra, *cap. de accuſ.it.* propoſuimus *Angel. Aretin. de malefic. Au-
guſtin. Arumæn ibidem in §. & ad quærelam, Titii, num* 38.39. *& ſeqq.* Proinde
generalis huc tranſcribenda regula eſt, ut ii quæ † perſonæ accuſare non 42
queant, iis in hac judiciorum officina opponi efficaciter poſſit illa exceptio
ad defenſionem reorum, cumprimis quoties in ingreſſu proceſſus, exceptio
ejuſmodi fuerit omiſſa, ignorantia juris vel facti, quia reorum defenſiones
in quocunque litis criminalis recipiuntur, quæ nullis obnoxiæ ſunt repagu-
lis, cum judex ipſe teneatur proſpicere reis, ne indefenſi condemnentur *per
ſupra deducta.* (11.) Affectuum pravorum: † Qui enim allegat delirium, 43
amentiam & furorem, quem paſſus ſit tempore patrati criminis, delicti ve-
niam meretur, *l.divus, ff.de off.præſid l.infans, ff. de ad L.Cornel.de ſic. cap.3.q.
9.* hinc in *l.fin.ff.de adminiſt.tut.* ait JCtus: perinde habendum eſſe id, quod
furioſus delinquit, ac ſi aliquo caſu præter factum hominis, nonnihil accidiſ-
ſet, & *Ulp.in l.5.§.2.ff. ad L. Aquil.* furorem quadrupedi æquiparat, quæ non
niſi ob indignam facto memoriam, quam refricat ſcandalum, morti addici-
tur, *Gail.2.obſerv.*110. Hinc eſt: Quod etiam furioſo parcatur, qui retro de-
liquit cum ſanæ mentis eſſet. *Bald. Alexand. in l.furioſum, C qui teſt.fac.poſſ.*
ubi addunt, quod † à bonorum annotatione non exoneret furor licet a pœ- 44
na ex-

na excuſet, ratio eſt, quia furioſus habetur pro mortuo. *l. qui ad certum ff. locat. l. bonor. ff. rem rat. haber.* defunctus verò pœnam non patitur, *l. defuncti, ff. de pub. jud.* nisi dixeris ſupplicium ſumi de cadaveribus eorum, qui ſibi ipſis mortem intulerunt, ratio diverſitatis eſt, quod hi delinquentes ex proæreſi delinquant, illi licet ab initio non minus deliquerint, hoc tamen intereſt, quod quæ cauſa furorem incidentem conſiderari ſtatuat, non ſit in conſideratione cædis ſui ipſius, quantumvis largo dicendi modo mors ſui ipſius non niſi depravato hominis affectui, nec furori abſimili, poſſit imputari, *vide Ann. Robert. rer. judicat. Tiraquell. de pœn. cauſa.* . *& 3. part. 1. de ind. gener. 18. Gœd. de contr & committ ſtipul. concluſ. 9. c. 7.* Non pauci huc afferunt affectus momentaneos ex ebrietate contractos, ut ebrietatem profuſam & inordinatam mentis ſentium & quaſi animi exilium, quà de re *Gail. 2. obſerv. 110. unde Coth. reſp. 45. num. 8.* ebrio (ait) cum plauſtro fœni eſt cedendum, eiq; tanquam bis puero parcendum, hinc illud:

Abſentem lædit, qui cum ebrio litigat.

4 Alias furioſo † comparatur ebrius *per text. c. venter. diſtinct. 35. hinc tit. C ſi quis imp maledix.* unde depromitur argumentum ejuſmodi: Si ebrietas excuſat eum, qui Imperatorem ipſum offendit. Ergo multo magis, ſi ab ebrio privatus quiſquam læſus fuerit, argumento a majori ad minus deducto, *arg. l 21. ff. de R. J. Eberh. in top. in loc. à maj. ad minus, vide Tiraquell. de pœn cauſ. 6. & lib. 1. de indic. gener. c. 82.* Res trita eſt & cotidiana, quæſtio à Dd. paſſim hinc inde ventilata, itaq; hic ſuperſedeo. Hoc tamen meminiſſe oportet, quandoquidem monſtroſum hoc ebrietatis vicium adeo inquinavit Germanos noſtros, ut ſi delicta ſubinde patrata, nō corrigenda vel punienda eſſe dixerimus, fore, ut delicta vulgaria manerent impunita, quænam quæſo flagitia & adulterii, & homicidii, noſtris conterraneis ut maximè uſitata non ſunt, nonne hæc crimina ſub ebrietate committuntur utplurimum, &c. ut ergo malum cum ipſis fibris eradicetur, non eſt quod indulgeatur ebrietati voluntariæ, quin potius ipſa, unde tanta naſcitur lerna malorum, coërceatur ingurgitatio uti ſeriò ſuadet *Petr. RoiZ. in deciſ. Lituan. deciſ 4. pag. 18.* & jam dudum *Ari. l 3. Eth. cap. 5.* qui *2. Polit. cap. 20.* meminit Pittaci Mitilenſis, ex 7. Græciæ ſapientibus, legem ferentis, ut ebrii, ſi quem pulſaſſent, majori pœna plecterentur. ac ſi ſobrii id factitaſſent, *Bald in l. 1. C. unde vi. Boſſ in tr. crim. tit. de defenſ. reor.* ubi diſtinguit inter ebrietatem caſualem & voluntariam. Inducens exemplum quorundam Hiſpanorum, qui dederunt vinum album, quaſi aquam rubeo mixtum ad prandium invitatis, ut inebriati pro ſeſe fidejuberent, quod factum, uti indignum bona fide. & viro bono haud congruum improbat, *gloſſ. in d. l. dolum. Cod. de dolo.* Ante aliquot annos nebulo aliquis domum abſentis propter graſſantem peſtem, ſpoliaturus furtim, inter ſcyphos ſeduxit viros alioquin bonæ famæ, ut ſibi opem ferrent, facinus patrabatur

batur dum omnes erant potati, ſeducti illi allegabant inter alia defenſionis capitula ebrietatem, qui & pœnæ mitigationem inde impetrabant. Sanè uti paſſim in materia indiciorum ſic in cauſa defenſionis obtinebit & obſervabitur regula; *Et quæ non ſunt proſunt, ſingula multa juvant.*

Denique ad affectus pravos, qui defenſionem reorum ſuppeditant, re-
ferenda ſunt † delicta dormientium & noctu-ambulonum, qui furioſis æ- 46
quiparantur, *l. 1. §. adipiſcuntur, ff. de acquir. poſſ.* Quapropter *Clem. unic. de homicid.* dormientem, qui occidit hominem, prorſus abſolvit, alias dormiens mortuo ſimilis dicitur, nam ſomnus vel ſopor frater mortis dicitur, *Vergil. 6. Æneid.*

Et conſanguineus lethi ſopor, &c.

Diogenem cum dormientem offendiſſet medicus, excitatus ille dixit: frater fratrem occupabat, *Plutarch. in Epiſt. conſol. ad Apollon.* Idem *Vergil. 6. Æneid.* ad ſomnum quaſi mortis fratrem alludit.

Dulcis & alta quies placidaq; ſimillima morti.

Et *Ovid. 2. amor. Eleg. 9.*

Stulte quid eſt ſomnus, gelidæ niſi mortis imago.

Imò ſomnus publicanus vitæ dicitur Plutarcho quia quaſi dimidium vitæ
auffert: aliis ſomnus mors † parva dicitur & fur vitæ, uti magnus ſomnus 47
mors ipſa dicitur inde *Vergil. 10. Æneid.*

Olli dura quies oculos & ferreus urget
Somnus, in æternam clauduntur lumina noctem.

Et *Catull. epig. 5.*

Soles occidere & redire poſſunt
Nobis cum ſemel occidit brevis lux
Non eſt perpetua una dormienda, &c

Noctu ambulones ſi quid profundo capti ſopore patrarunt, nō in pœnam iis imputatur, quia ratione adeoque dolo deſtituuntur, quos inſtar furioſorum cuſtodiri fas eſt clauſtris & cancellis, ne dum vagantur liberi, & ſibi & proximo incauto noceant, *l. 14. ff. de off. præſ.* non ſecus ac ſi beſtia fera vel nociva includi debet, quo minus lædat hominem vel aliam beſtiam *l. . ff. ſi quadr. pauper. feciſ. dic. l. 2. ff. ad L. Aquil. in l. 14. modo citata, ff. de off. præſid.* præcipitur conſanguineis furioſorum, ut eum in vinculis cuſtodiant, &c. eadem ratione
dicendum † eſt de dormiente & noctu-ambulone, quia parium idem eſt judi- 48
cium, ratio in omnibus verſatur & identitatem vel diverſitatem juris inducit, *Eberh. in topic. pag. 123.* hinc Plato de *ll. lib. 11.* Prudenter conſtitutum meminit, ut propinqui furioſum domi quocunq; modo poſſint, cuſtodiant, quod niſi fecerint, mulctentur, qui maximi cenſus ſunt, drachmis 100. ſive ſervum ſive liberum minus diligenter cuſtodiant. Qui ſecundi cenſus, quatuor de quinque minæ partibus: qui tertii, tribus, qui quarti duabus, *Cic. 2. de invent.*

42 Non me fugit, † dubitare non paucos, an noctambuli [illegible], quos vitio phantaſiæ correptos, medici Incubo [illegible], quem paſſionis affectum inter actiones recenſere non poſſumus, [illegible] poſſe [illegible] idem concurrunt. Incubus, ut illi ajunt, morbus eſt ex [illegible] diſpoſitione maliſque humoribus naſcens, qui hominem [illegible] coque [illegible] vexat, ut eſt ſi met corpus aliquod grave [illegible] bere. Noctis ambulatio eſt motus hominis [illegible] non membra ſingula quieſcunt, & in actione [illegible] oratione publica inaugurali publicè diſſeruit [illegible] *I. Herlius* [illegible] Wittebergæ Gliſſam Cattorum vocaretur [illegible] teſte [illegible] noviſſe Studioſum, qui dormiens [illegible] aſcendere [illegible] tecta ædium altiorum, unde aliquando [illegible] Stoicus dormiens paſſim deambulavit, & [illegible] tecta raptus eſt, teſte Rav[illegible] ter novi adoleſcentem nobilem, [illegible] de deambulare, aperire fores, [illegible] quaſi ſcripturam manu tractare. Alias [illegible] *Bodin. lib. 3 de dæmon. cap. 6.* Quod vir fuerit, qui dormiens [illegible], quem [illegible] ipſo cubabat, proſequens [illegible] animadverteret, [illegible] ceſſit quidem ulterius [illegible] procederet nomine appellavit. Sic ille repente corruit dormiens & ſubmerſus eſt. Sic cujuſdam pharmacopœi [illegible] lus ſingulis noctibus dormiens ſurgebat, ut artem gladiatoriam [illegible]. Alter circa mediam noctem [illegible] perlebat & adornabat, [illegible] repetebat. [illegible] quidam gladio cinctus Sequanam tranavit, cumque dormiens interfecit, quem vigilans conſtituerat, atque ſcelere [illegible] ctum redit. Johannes Alemannus in Hip[illegible] quem refert [illegible] *in theatr. human. vitæ* [illegible] *pag. 416.* De Galeno [illegible] ſcribitur, quod noctu [illegible] iens, [illegible] dum ferme integrum dormiendo peregit [illegible] eſt, quam in [illegible] Vulgus [illegible] lat [illegible] bulonibus [illegible] [illegible]

43 obiiſſe [illegible], quo plus quam [illegible] humana [illegible] vire paſſim [illegible] *part. 1 de* [illegible] *cap.* [illegible] *Theræus* [illegible] *tract. de appar. Spirit.* [illegible] *de dæmon.* [illegible] *cap.* [illegible] Theologis & Jeſuitis hanc [illegible] quæſtionem [illegible] nec ullam hic [illegible] certa contra [illegible] Chriſti [illegible] in gladio, quo [illegible]

Bodinus

nullum hic in obſeſſis crimen, Dæmones delinquunt, ut ibi latro. Porrò quid ſi huc peccato ad hanc miſeriam veniſſent mortales: numquid, quæ per ipſos committuntur peccata, ipſis imputabuntur? quemadmodum ebriis homicidia? fornicationes? blaſphemiæ? &c. reſpondeo non imputanda: nec horum nomine ſupplicium de ipſis à Deo ſumptum iri, alia ratio ebrietatis, quam ſequuntur homicidia & fornicationes: alia carnificina Dæmonum, propria culpa contractæ. Ebrietas peccatum eſt: carnificina hæc non peccatum, ſed peccati pœna, omnis culpa quæ ſecum alia peccata trahit, illos omnium ſequentium peccatorum reos conſtituit, qui culpa ſunt authores, at pœna ſi qua talis eſt, ut ad peccata inducat, reatum horum ad eum, cui pœna inflicta eſt, non trahit, ita teſtatus quæſt. 119. *in* 8. *Matth.* nec malè. Quid enim ſi furtum alicui cauſa incarcerationis ſit, idcircò idem dicemus cauſam eſſe omiſſionis omnium officiorum, ad quæ legibus Chriſtianæ juſtitiæ tenetur? ſed nec per ſe peccata, quæ obſeſſi homines committunt, conjuncta ſunt cum Dæmonum carnificina, aut mox illam ſequūtur, atqui in hominem, ob delictum aliquod Dæmon poteſtatem accepit, quocirca quemadmodum peccata, quæ ebrietatem ſequuntur, quæ tamen nullo modo poſſunt prævideri futura ebriis non imputantur, itaque illa quæ per obſeſſos homines committuntur. (12.)
Affectuum bonorum; † non enim præſumitur conjunctum vel amicum 51
nocuiſſe vel offendiſſe accuſatorem, puta reus conſanguineus eſt affinis vel amicus partis offenſæ, cum enim de inimico præſumatur omne malum, *part. 1. de indic. gener cap.* Sic de † amico omne bonum, quia contrariorum con- 52
traria eſt ratio & juris diſpoſitio, *Eberh. in topic. in loc. à contr.* & quod facit propoſitum in propoſito, idem operatur oppoſitum in oppoſito, *l. fin §. fin. ff. de leg. 3.* imò habitus facit cognoſcere privationem & vice versa, *l. 4. ubi Bald. ff. de juſt. & jur.* Atque huic ſanguinis neceſſitudini alias plurima ſunt tributa extra ordinem, extat hac de re locus *in ſacr. ut Exod. c. 2.* extant inde exempla & præjudicia in foro contentioſo deciſa, quæ referendæ ſunt etiam atque eò fundandæ defenſiones reorum. Sic conſanguinei, conjuges, amici recipientes bannitos ſibi neceſſitudine ſanguinis copulæ, vel amicitiæ conjunctos non incidunt in pœnam læſæ majeſtatis, vel in bannum ipſo jure prolixè *Gail. 2. de pp. cap.* 10. Sic conſanguinei † reperti in loco ſuſpecto clam vel no- 53
ctu cum muliere verſantes non præſumuntur fornicaſſe, *Eberhard. in top. in loc. à commun. accident.*

Sic amicus † juvans, conſanguineus opem ferens inſulto ab inimico, 54
& dum vis in cædem tranſit, cujus reus dicitur conjunctus, non præſumitur eum animo occidendi inter feciſſe adverſarium, ſed ut defenderet conjunctum vel amicum, *l. 5 ubi Bart ff. de I. & jur.* amicitia uti fraternitati comparatur, *l. verum ubi gloſſ ff. pro ſocio.* ita pari jure hic prædominatur, ita † ut 55
accuſatus vel delatus jura amicitiæ opponere poſſit heredibus defuncti vel ac-

cuſatori ipſi, poſito, de maleficio agi clam patrato, ecquid enim aliud amicitia, quid aliud fraternitas, quam diverſus ſpiritus anima diverſa in corporibus diverſis? *Gell.12.noct. Att.cap.*10. Ad quid, ſi ſanguinis conjunctio non calet aut valet, in eodem domicilio, antequam eſſet nativitas, coalita habitatio, in iiſdem incunabilis peracta infantia, colluſus, eorum dum appellatio parentum, dulcedo prolis, par ex majorum imaginibus gloria, uxor ſuavis, affines, compatres, cognati, hinc comparati, &c. *vide Valer. Max.5.c.5 Tiraquell.de pœn. cauſ.22.num.* 6. Sic licet converſatio cum improbis indicia pariat deli-
56 ctorum, *part.1.de indic. cap* 8. non tamen regula illa aliquid operatur, ubi † reus delictorum cum amicis & conſanguineis converſatur, opponi enim poteſt accuſatori vel delatori indicia ejuſmodi alleganti, amicus eſt, conſanguineus, vel affinis, *Bald in c. a nobis num.1. extr. de except. Gail.2. de pac. pub c.*10 *num.*8. ubi adſtruit non in ſuſpicionem criminis incidere eum, qui cum fure, latrone, aut homicida converſatur, ſi facti ſcientiam non habeat, &c. *Hyppol. de l. qui ignorans, num. 9. ff ad L. Cornel. de Sicar. text. l. 22. C. de pœn.* Sancimus, ait lex, ibi eſſe pœnam, ubi & noxa eſt, propinquos, nothos, familiares, procul à calumnia ſubmovemus, quos reos ſceleris, ſocietas non facit, nec enim affinitas vel amicitia nefarium crimen admittunt, &c (13.) Ignorantiæ;
57 † Quia ignorans nedum eſt in culpa, ignorans non contemnit cõſtitutiones Principum, *l. ſi quis ignorans, ff. locat. Gail. d. loc. 2. de pp. cap. 10. num. 7. Boſſ. in tract. crim. de defenſ. reor. num.* 40. ignorans excuſatur a delicto, adeoque à pœna, *c. cognovit de conſtit. l. 40. ff. de pœn.* hinc Feudiſtæ *in c. 1. de contr. intr. dom. & empt. de feud.* ubi ignorans feudi qualitatem non perdit beneficium, *Candin. de homicidiar. eorumq; pœn. pag. mihi* 160. in legibus, inquit, quæ requirunt verum dolum, etiam juris ignorantia excuſat, neque enim ſine affectu delinquendi delictum committitur, *l. 1. C. de fur. l. 53. ff. eod. vide gloſſ. in l. plagii, C. ad L. Flav. de plagiar. c. per tuas ubi Hoſt. & Felin. de Simon. Bald. conſ.* [illegible]
58 *lib.*3. dicens Quod † ignorantia ſive juſta, ſive injuſta excuſet a pœna corporali, quæ ſententia multò magis procedit & obtinet reſpectu juris, quod controverſum dicitur & in quantum non ex omni aſſe certum & definitum, *c. ut debitus*, ubi Canoniſtæ, *ext. de appell. c. cum dilect.* ubi ſimiliter, Dd. *ext. de uſur.* Sciendum verò eſt in præſentiarum, ignorantiam juris non paſſim prodeſſe omnibus iis, qui prætendunt illam ignorantiam, ſed qui jure eam poſſunt & cum effectu allegare qui ſunt ruſtici, idiotæ, mulieres, plebei, qui juramento
59 † affirmare poſſunt ignorantiam, ut excludatur dolus, alias nulli præbens patrocinium, *vide Tiraqu. de pœn. cauſ.* 11.

Quod juramentum cumprimis in facti ignorantia probanda admittatur, neque enim aliter ea, quæ latentis ſunt animi, probari poſſunt, adeo ut in actibus indifferentibus purgatio ejuſmodi toleretur, ut in cauſa injuria-
60 rum & quibus aliis *Ant. Gail.* [illegible] *obſerv. pr. cap.* [illegible]. Si qua † tamen cauſa igno-

ignorantiæ verſetur in terminis juris gentiũ, aliter dicendum erit, *l. 2. C. de in jus voc. gloſſ. in l. reſpiciendum, §. delinquunt. ff. de pœn.* Sic quoque Notarium non excuſat errantem, *Dd. in l. ex conſenſu, § fin. ff. de appell.* Sic clam † facta 61
non excuſantur nec purgantur allegatâ ignorantia *l. fin. ff. de rit. nupt. gloſſ. in l. qui contra verbo errore, C. de inceſt. nupt.* Porrò qui † confeſſus contraria 62
allegat non revocando quidem priora ſed verſutè contradicendo, cum contradicentia mendacia arguant, hinc illud, oportet mendacem eſſe memorem, nec ſimplicitatẽ arguit contrarietas, *Bald. in l. pen. C. de jur. & fact. ignor.* Sic quoad ſolennitates, quoad ſolvendum canonem, ne cadat emphiteuſi ruſticus non canonem ſolvens intra triennium, quoad inventaria, ubi ea de juris apicibus requiruntur, non excuſat ſimplicitas, ut paucis plura comprehendam, quibus de cauſis conſulatur ruſticitati ut ignorantiæ probabili ferè expreſsę ſunt eædem cauſæ & jure proditæ, *ut teſtatur Tiraquell. de pœn. cauſ. 11. in fine. num. 23.* (14.) Doli ceſſantis: † Ut enim dolus radix eſt & cauſa for- 63
malis delicti, vel ut *Boſſ. ait d. loc. de defenſ. reor. num. 74*, dolus anima pœnæ. Sic dolo non probato, reus non tenetur, nec pœna ordinaria plectitur *gloſſ. in cap. preſbyterum, ext. de homicid. Tiraquell. de pœn. cauſ. 13. num. 15.* prout de *Boſſ. d. loc. num. 69.* Si ſumus in crimine falſi, imprimis eſt conſiderandum, an doloſè geſtum fuerit id, de quo arguitur, quia ſine dolo non eſt falſum comprehenſum ſunt verba Boſſii adde *l. 1 ff. de falſ. l. quid ſit falſum, ff. eod.* in dubio autem præſumitur error, *l. quoties, §. 1. ff. de hered. inſt.* Secundo, inquit, eſt conſiderandum an ſit nocibilis falſitas dato quod ſit doloſa, quia alias non punitur ſaltem pœna extraordinaria, *l. damus, ubi Dd. c. de falſ.* porrò ut falſitas neceſſario concludat: quia ubi nullum eſt falſum nec ex antecedenti, vel objecto, recta ad falſum inferri nequit, per regulam: Quod † poſſibili ve- 64
ritate in eſſe poſitâ, nulla detur falſitas, quæ ſe invicem deſtruunt, *Bald. in c. 1. de not. feud.* Porrò furti † cauſa ventilata pro defenſione reorum adferri 65
poteſt non furandi propoſito contrectationem factam, cum voluntas & propoſitum diſtinguit maleficia, *l. 53. ff. de furt. Boſſ d. loc. num. 71. §. 1. Inſt. vi bon. raptor.* ubi licet quis illicitè capiat, non tamen furandi animo commiſſum furtum dicitur, *Alex. conſil. 135. volum. 1.* ubi diſputat an animus furandi ſuperveniens ex poſt facto furtum faciat, quaſi ab initio furtum commiſſum fuerit? *Boſſ d. loc. numer. 71.* ubi adſerit, quod hæc ita allata etiam locum habeant in cauſa latrocinii vel rapinæ. (15.) Certi reſpectus: Ut cum reus allegat ſe non ea intentione vel reſpectu nonnihil patraſſe, uti adverſarius ei adfingat, *Boſſ d. loc. n. 47. & 48.* ubi exemplum ponit † criminis læſæ majeſtatis 66
prætenſi, reus excipiens dicit: non pertinere ad rem publicam nec ejus ſalutẽ concernere quæcunque factitaverit, *Boſſ d. loc.* Simpliciter (ait) occidere vel offendere aliquem à conſiliis vel aſſiſtenti lateri Principis nõ eſt incidere, *in l. quiſquis, C. ad L. Jul. majeſt.* Porrò eſt etiam conſiderandum (inquit,) an ſu-

ſpectus hujus criminis ſit ſubditus Principis offenſi, quia non ſubditus non incidit in crimen læſæ majeſtatis, *cap. paſtoralis, de re jud.* Quapropter *Eberhard. in top. in loc. de tanquam ſeu, &c num. 5.* quotidie in practica inſpiciendum eſt, quo nomine aliquid fiat, qua reſpectu & qua ſea cujus con-
67 templatione, ſuccedit alia regula. Quod † hominis ſtatus ſit dividuus admittens diſtractionem, *Dauth. de teſtam. num. 1* [illegible]. *Idem Eberhard. d. d.* [illegible]
68 ubi adderit, † quod licet crimen capitale ſit alapam inferre judici reſpectu alii privati non tamen percuſſor ultimo ſupplicio ſit afficiendus cum judex offenſus eſt extra curiam vel tribunale, & quæ aliæ. Cætera, quæ pro defenſione reorum adferri poſſunt, committuntur diſcretioni prudentiorum, nos hic pro modulo etiam aperuiſſe exiſtimamus iis, quæ procul dubio à peritioribus longè latius extendi poterunt, quæ contra examen teſtium pro defenſione reorum adducenda docet, *Farinac. de opp. contr. exam. teſt. lib. 3. tit. 8. quæſt. 75. cap. 4. & q. 7* [illegible] *part. 4. &c.* quæ pro defenſione eorum ratione ſingulorum delictorum allegari in ſpecie ſeſe demonſtraſſe ait, *Ægid. Boſſ. d. loc. num. 71. ibi.* Et ita conſiderando cætera delicta & recurrendo ad ea, quæ particulatim circa ea dicam invenientur defenſiones, *pag. mihi 199.* quò lectorem cupidum remitto, mihi ſufficit hæc digito ſaltem demonſtraſſe.

CAPUT XXXIV.

DE REPLICA IN CAUSIS INDICIORUM.

SUMMARIA.

1. *Replica in hoc indiciorum puncto eſt admittenda.*
2. *Rationes adferuntur cur replica ſit concedenda?*
3. *Lex utilis Reipublicæ [illegible] anda eſt extenſione.*
4. *Sententia bene lata [illegible] executioni mandanda.*
5. *Ubi magnum periculum, cautius eſt agendum.*
6. *Diu multumq; conſideret judex priuſquam hominis [illegible] eritia.*
7. *Ante [illegible] hominem torquent ſimul ter caute procedat, quia tortura eſt penè mors ipſa.*
8. *Iudex eſt legum cuſtos & a[illegible] humanarum cenſor & vigil.*
9. *Declaratur exemplis cur admittenda ſit replica* [illegible]
10. *Qua* [illegible]
11. [illegible]
12. *Quomodo* [illegible] *impugnare poſſit* [illegible] *examen teſtium?*
13. [illegible] *defenſiones reorum.*

REplicam † accuſatoris vel Fiſcalis in cauſa Indiciorum admittendam eſſe non dubium involvit, *Gobler. in* [illegible] *Conſt. Crim. Car.* [illegible] 2. ubi Exceptionem & replicam [illegible] admittat, *Conſt. Crim. art.* [illegible] *ibi.* Und was ſich in der Bratſchrede der ſeiner Bekandnuß und a[illegible]

[illegible]

[illegible] ſeyn ſondern ſoll eigentlich außgeſchehen [illegible] erkennet vnd außgeſtellet [illegible] Abſolution [illegible] oder verhafftet werden / etc. Quia [illegible] omnia, vel exclusa, [illegible] ſufficienter demonstrata [illegible] quam investigandam [illegible] 3
nem totalias jure recepta ſunt [illegible] & remota nonnunquam etiam violenta & rigoroſa ut eſt adhibitio quæſtionum vel [illegible] admiſſa priſca illa purgationum genera, & quæ alia [illegible] conceſſis minoribus & alias de jure Civili ſtatutis modis & via procedendi in cauſis civilibus [illegible] & [illegible], cum regulariter, [illegible] de criminalibus [illegible] & digeſto codice, ubi æquitas & juris ratio [illegible], ex jure Civili [illegible] & in claſſem proceſſus criminalis transferenda. [illegible] *crim pag. mihi 46. quæſt.* [illegible] ibi. cum enim judicia criminalia [illegible] vel [illegible], ubi aliter cautum non reperitur, &c. hinc *Dam.* [illegible] lis Reipublicæ (inquit,) juvanda eſt aliqua interpretatione vel [illegible] quia favor eſt ampliandus non reſtringendus, *D. l. in* [illegible] his obſtat, quod hoc pacto tela proceſſus ordinarii [illegible] jure dicendum non erat, cum cauſæ incarceratorum [illegible] de ſimplici & plano expediendæ. *Cyn. in l. fin. C. ſi quis* [illegible] *quam imp. inter pupill. & vid. Bald. in l. 1.* [illegible] *C. de cuſtod.* [illegible] Diſtinguo autem inter cauſas capitales & non capitales, illæ uti altiorem requirunt factorum indaginem & perfectam juxta cauſæ probationem, quia probationes in cauſa criminali luce meridiana eſſe debent [illegible].

Si [illegible] ad veritatem inveſtigandam comparata [illegible] excludi non debent, [illegible] non modicum præſtat compendium & [illegible] plenæ cauſæ cognitio, ac diſcuſſio ſtatus quæſtionis [illegible] & [illegible] *arg.* [illegible] *fin. §. C. de cuſtod. reor.* cujus legis textus de materia [illegible] cumprimis [illegible] git, nec non ſtabilit hanc diſtinctionem, quia [illegible], quod [illegible], ſi
qua forſan adhuc alleganda fuerint à reo, ea ſummarie examinentur [illegible] 4
ſententiæ bene latæ citius [illegible] mandandæ executioni. Cæterum [illegible] capitales cauſæ unde rei carceribus [illegible], non tam accuratam requirunt inquiſitionem & indaginem [illegible] plenam [illegible] adfert [illegible] [illegible], quam [illegible] quanto [illegible] eſt vita hominis [illegible] extrema, quæ [illegible], tanto major [illegible] in cauſis capitalibus [illegible] & [illegible] *in l. adduci* [illegible] *C. de* [illegible] *gloſſ.* [illegible] *in verbo* [illegible] ut nempe major [illegible] [illegible] *cap.* [illegible] *de* [illegible] *ac Carben.* [illegible] nunquam de morte hominis [illegible] lata eſt, *l. Juvenal. Satir.* [illegible] *lib. 2.* [illegible] quod refert [illegible] hominis qui pars mundi [illegible] & [illegible] compl[illegible]
[illegible]

ſententiam latrum diu multumq; cunctari oporteret, nec præcipiti ſtudio ubi irrevocabile eſt factum.

Irreducemq; viam deſerto limine carpit.

Lucan.lib. 9. agitars. Quia nunquam tardum reputandum erit, quod omniũ eſt poſtremum.

——— *Mors ultima linea rerum,*

Proinde germanicum hoc ab eodem citatum.

Menſchen Tödten iſt eine groſſe Sach/
Man bedencke ſich wol vnd thue gemach.

Ferdinandum I. Dicitur in hæc prorupiſſe verba, cum aliquem damnaſſet ira præventus & poſtea mutaſſet ſententiam: Ein Jahre gibt keinen gutten Jäger/ ich kan bey mir nicht finden/daß ich einem daß jenige nemen ſolte/ welches ich jhm hernach nicht wider geben kan/ wann ich einem Güter/ Grund vnd Boden neme/ ſo kan ich es jhm wider geben vnnd mehr dazu/ wann er ſich beſſert/ aber Augen außſtechen/ vnd wider einſetzen/ Kopff abſchlagen vnd wider auffſetzen/ iſt allein Gottes Werck. *Idem d.loc.* Quæ ratio in materia indicio-
7 rum non minus ſtringit, cum torquere † hominem immerentem, res ſit graviſſima, quia tortura quaſi mors ipſa dicitur, graviorque manus utriuſq; amputatione, *Bart.in l 6. Cod.de tranſact. & l. 1.C. unde vir.* Imò gratius eſt juxta Caſſiodorum 3. *Epiſt. 46.* Spem mortis citæ expetere quam tormentorum crudelia ſuſtinere, inter ſupremas enim anhelantis anguſtias votum eſt, potius perire, quam vivere, quia deteſtabilis ſenſus pœnarum excludit dulciſſimæ ſalutis affectum, *Zaſ.conſil.19.n.32. vol. 1.*

Adde quod replica, utplurimum concernat jus accuſatoris vel Fiſcalis, quibus ne ſuum denegetur, non minus ratio juris ſuggerit, quam æquitas paſſim deſiderat non reſtringendas eſſe reorum defenſiones, ne enim veritas
8 ſupprimatur hoc reſpectu, utique deſudabit judex qui † dicitur legum cuſtos & actionum humanarum vigil & cenſor, fieri enim poteſt, ut licet reus theſin ſuarum defenſionalium probaverit, ea tamen excludatur replicatione
9 in contrariũ adductà, uti exemplis † declarabimus, judex verò in præſentiarum erit circumſpectus ut priuſquam eam admittat, ponderet cauſam, an ſit relevans, prægnans & excluſiva defenſionalium reorum. Ut accuſatur Titius quod occiderit Mævium. Titius excipit ſub ingreſſu proceſſus vice defenſionis ſuæ, quod occiſus fuerit bannitus, quem occidere licuerit, hæc exceptio eſt ſummè relevans & deſtructoria intentionis accuſatoriæ. Sed accuſator replicat & probat bannitum proditorio, vel affectu alias privato vel depravato eſſe necatum, vel reum animo ſcelerato effeciſſe, ut occiſus in bannitum declararetur ut eum, cui fata præparaverat, impunè occidere poſſet, *Ægid.Boſſ.in tract.crim.de defenſ.reor.pag.mihi* 196. Vel reus allegat vim defenſionis per modum exceptionis peremptoriæ juxta tradita capitis antecedentis,

dentis, [illegible] hostem occidisse, replicat ille, hostem jam in castra receptum vel vita donatum fuisse, idque probat reum, eum occidisse hominem noviſſe, & [illegible] *Boſſ.* [illegible] ubi cautela eſt, ut [illegible] vel fiſcalis [illegible] concipiat libellum, qui præveniat exceptionibus [illegible], allegans & una vice demonſtrans, quæ loco replicarum adduci [illegible], hic e contra [illegible] nihil ſupereſt, quod ad ſui defenſionem hoc pacto allegare poſſit [illegible] alias vulgariter dici ſolet, quod res vel cauſa cum ſuis qualitatibus & circumſtantiis ſit proponenda, deducenda. Quia † qualitas inhærens vel adveniens enti, ens novum conſtituit, *Menoch. de arb. jud.* [illegible] Quia [illegible] qualitates factorum narrandæ ſunt pro quorum impetrandis ad lites reſcripto vel decreto, *Idem Menoch. caſ.* 201. [illegible] demum [illegible] Quod ex omnibus ſuis partibus conſtat, *l. 2. ff. de orig. jur.*

Præterea hic conſiderandum eſt, in quod & quale ſeſe [illegible] incommodum, quidque ei idem impendeat periculum, [illegible] probaverit accuſationem, *arg. Conſt. Crim. Carol. V. art.* 12. [illegible] ſit eidem denegari, quæ ad ſufficientem cauſæ probationem & [illegible] ſionem defenſionalium præſtare videbuntur, cum [illegible] nerimus, interpellante hic quodammodo intereſſe publico, quia Reipublicæ intereſt ne delicta maneant impunita, *l. [illegible] C. de Epiſcop. aud.* [illegible] *præſ.* [illegible] bium [illegible] juſtitia ne [illegible] omnes Philoſophi [illegible] *Aventin.* & quotquot [illegible] quam infideles aliqua rerum cognitione & judicio pollent [illegible] ſtatuunt ex injuſtitia, † regiones una cum hominibus & brutis animalibus interire, [illegible] contra per juſtitiam [illegible] fovent [illegible] *de cauſ. & abuſ. rer. in civil. & Eccleſ. ſtat. Johan.* Wolf [illegible] *lect. memor.* [illegible] impunitas delictorum eſt flagitiorum mater, *Cic. pro Lig.* [illegible] *Thucyd. de rep.* [illegible] quæ Reges & Reſpublicas evertit ut *Romanor. & Lacedæm.* [illegible] *de Valent. in part. litig.* [illegible] *cap.* 14 *n* 7. hinc illud:

Pinguior ulla nequit mactari victima ſummo,
Quam meritus fieri victima grata Deo.

Anton. [illegible] *in pecca* [illegible] *jur.* [illegible] *num* [illegible] *& ſeqq.* Alias vide † implicatione [illegible] hic opponi poſſunt ſi quæ contra [illegible] teſtium opponenda fuerint, uti enim reus excipit contra accuſatoris vel fiſcalis etiam contra teſtium *qui de re ſcripta*, ita hi ipſi [illegible] examen [illegible] factum, nempe adverſus perſonas & dicta teſtium excipere poſſunt, modo tamen diverſo quoad perſonas teſtium. Quamquam enim teſtes accuſatoris vel fiſcales omni exceptione majores eſſe debeant [illegible] delictis [illegible], *Farinac. 2. de teſt. tit.* [illegible] *quæſt.* [illegible] *art.* 4. *art.* [illegible] *& ſeqq.* non tamen [illegible] quiſita teſtium rei requiritur fides, nam [illegible] inhabiles & de jure regulari reprobatos admitti conſtat, *Farinac.* [illegible]

Et [illegible] quæ-

quaſt.65.part.3.& ſeqq.Clar.in pr. crim.§ fin quaſt. 24.num. 19. ibi ſcias, quod iſti omnes, quos diximus repelli à teſtificando in cauſis criminalibus, poſſunt nihilominus & debent admitti ad defenſam & ſic ad probandam innocentiam reorum, *Spec.de inquiſit. §.1. num.22.* quod tamen intellige *ſubdit. Clarus citato loco.* Non ut omninò plenè probent. ſed ut deinde inſpecta facti & perſonarum qualitate, judicis ipſius religioni relinquatur, quanta ei ſit habenda fides, quæ ratio quoque haud immeritò ſtringere debet quoad teſtium dicta impugnata, ut quà par poſſibilitate, ſi partim contraria, ſingularia vel repu-
13 gnantia ipſa viderit † judex; ſuſtineat, ſalvet, & ne pereat reorum defenſio, omni ſtudio procuret & adlaboret, cum tralaticium ſit judicis officium eſſe, ut quærat defenſiones reorum, quoties illi ab amicis adeoque ſpe & ope humana deluſi fuerint, &c. *Conſtit. Crim. art 47. Caſon. in tr. de indic. 9. part.62. n.18. Bull.d.conſil.1. n.60.*

CAPUT XXXV.

DE DUPLICA REORUM IN CAUSIS Indiciorum.

SUMMARIA.

1. *Duplica eſt pars defenſionis reorum.*
2. *Quod actori licet, reo non eſt denegandum.*
3. *Duplica eſt replicarum confutatio.*
4. *Æqualitas in judiciis ſervanda*
5. *Invectiva in judices ſeſe præcipitantes traditur.*
6. *Sub hoc termino judex juramenta ad purgandum decernere & pro re nata admittere poteſt.*
7. *Actore non probante, reus abſolvendus eſt etiam in cauſis indiciorum.*
8 *An ultra duplicas nonnihil ſit admittendum, quod agatur?*
9 *Quidnam in ſpecie ultra duplicas admitti debeat nec ne?*
10. *Quod de novo emergit novo indiget juris remedio.*
11. *In cauſa civili documenta nova poſt concluſionem cauſæ admittuntur.*
12. *Quid operetur clauſula ſi quid facti, productis vel ſcriptis ſubnexa?*
13. *Quoad judicem in cauſis criminalibus nunquam concluditur.*
14 *An concluſio partium ſit neceſſaria in cauſa criminali?*
15. *Quando demum poſt duplicam admittenda ſint adhuc nova ſcripta*
16. *Veruti adv[illegible] in poſtremo ſui pro oſtentare quid [illegible] poſſint*
17. *Iudex arbitrabitur quamnam ob cauſam ſcripta ulteriora ſint concedenda.*

1 QUoniam duplica † pars defenſionis ſit reorum ac ſeſe habeat reſpectu replicarum, ut exceptio actionis, defenſio reſpectu accuſationis, *Bald. de Perigl. in tract. de qq.& tort.cap.2. num.7.* adeo ut confeſſo etiam non denegetur defenſio, & defenſionis facultas in genere & quavis judicii parte concedatur reo paſſim ante torturam, *argum.l.18. §. 9. ff. de quaſt.* Sane ſi duplica hac-

hic admittenda non eſt, replicatio utique rejicienda erat: neque enim † 2
quod actori licet, reo non licere non debet, cujus partes ſunt favorabiliores
cumprimis in hac materia juris adeò gravi & ardua, *l. 4. ubi Dd. C. de edend.*
L. 2. ff. de probat. Sed qua neceſſitate, quo jure replica ſit toleranda capite ante-
cedenti diximus. Ergò & duplica non eſt auferenda reo, quæ † replicæ eſt 3
confutatio vel excluſio. Alias etiam in civilibus vulgò dicimus, quod † æ- 4
qualitas in judiciis ſit obſervanda, neque reo denegandum ſit, quod actori li-
ceat, *c. non licet, de R. J. in 6. & c. ceterùm, §. novit, de jud. c. cum inter. ext. de ex-
cept. l. fin. Cod. de fr. & lit. expenſ. Gail. 1 obſerv. 91. num. 14. & de pac. public. lib. 1.
cap. 15. num. 12.*

Porrò quod reo competat receſſus ultimus, der letzte Satz / *Ordin. Ca-
mer. p. 3. cap. 15. & aliquot. ſeqq.* Quod ſi in civilibus obtinet, quanto magis in
criminalibus admittendum erit, ne rei habeant, unde quærulentur, unde præ-
cipitantiæ arguant, deferant, & inculpent judicem, *vide Vent. de Val. in parth.
litig. l. cap. 14. Roland. à Valle conſil. 12. volum. 3. num.* 34. ubi reprehendit † ju- 5
dices illos, qui ſuum VELLE loco indiciorum ſubrogantes, ut plurimum ve-
lo levato, & non admiſsâ ſufficienti cauſæ diſcuſſione, reos confeſtim quæ-
ſtioni tradunt, quos canes appellat ex Vitalino *de malef. de inquiſ. n. 8. Parth.
litig. d. loc.* Draconiſtas *ex Camer. Bull. d. conſil. 1. num. 61.* neque more Japonici
Regis ſine abſoluto examine facti concedat offenſo vel carnifici, ut abeat, &
ventrem reo ſcindat. *Beſold. 1. polit. 4. concluſ. 17.* hinc Democritus Ætolorum
prætor apud *Liv. lib. 31.* dicebat: Rem nullam eſſe magni diſcriminis, conſi-
liis tam inimicam, quam celeritatem, celerem pœnitentiam, ſed eandem ſe-
ram atque inutilem ſequi, cum præcipitata raptim conſilia neq; revocari, ne-
que in integrum reſtitui poſſint. hinc ſcitum hoc apud N. F. ibi: es gilt nicht
der Haſelnüß / ſondern dem armen Beklagten ſein Leben / welches du jhm nicht
widergeben kanſt / wann dir es ſchon hernach leid ſein wird. etc.

Hac admiſsâ duplicâ reus per allegata jura deducere poteſt ſuas defen-
ſiones, & reſpondere objectionibus accuſatoris vel Fiſcalis adverſus perſo-
nam & dicta teſtium factis. Porrò † ſub termino hoc judex deferre poteſt 6
reo purgationis juramentum, ubi reus opprimi non poteſt delationibus &
reſpective probationibus adverſariorum, eſt equidem certiſſima & infallibi-
lis juris maxima. Quod in cauſis criminalibus perinde ac civilibus accuſatore
non probante, reus ſit abſolvendus, *Jaſon. in l. non novum, C. de edend. num. 5.
Clar. in d. pract. crim. § fin. quæſt. 62. num. 1. Idem d. loc. quæſt. 63. num.* 5. ibi: ſolet
quandoque accuſatore non probante deferri reo juramentum purgationis,
& hoc etiamſi reus ipſe nihil probaverit, & hæc eſt communis opinio, hoc
autem juramentum (ſubdit) locum habet, quando contra ipſum reum non
adſunt indicia, quæ ad torturam ſufficiunt, *vide eundem quæſt. 45 num.* 9. ubi
juramentum hujuſmodi veritatis appellitat, non purgationis, & dicit reci-

piendum id eſſe in caſibus permiſſis, ſtylo curiæ id ita exigente *in fine d. nu.9* nonnunquam intermiſſo hoc juramento abſque ulteriori ſuffragio & mora non exiſtentibus indiciis ſufficientibus reus confeſtim abſolvitur per tritam
7 & ſuperius relatam regulam: Quod † actore non probante reus abſolvendus ſit etiam in cauſis indiciorum, *Clar.d.quæſt. 63. num. 6. vide Ant. Bull.in dicto conſil.* 1.ubi conjugis meæ fratrem, juvenem jam piè defunctum, inducit defendit & exculpat à homicidio caſuali, & juramentum ejuſmodi ad plenariam abſolutionem ſufficiens eſſe multis rationibus evincit & demonſtrat.
8 Sed † an ultra duplices admittenda adhuc acta quærit & decidit *Conſt. Crim. Carol.V. art.* 73. ibi: So aber die Parter derhalben weiter ſchreiben wollen/ das alles ſoll in Schrifften gedupplicirt/ vnd in Zeit ſo die Kundſchafft Verhörer dazu beſtimmen/ beſchehen vnnd doch kein Theil einer Kundſchafft halb/ über zwo Schrifft zuthun/ (darin ſie all jhre Behelff vnd Notturfft fürbringen vnd damit beſchlieſſen ſollen) nicht zugelaſſen werden / Es were dann ſache/ daß der Verhörer auß mercklichen / trefflichen vnd bewegenden Vrſachen befinden würde/ daß er es gar nicht vmbgehen könte / ſo ſoll er jedlichem Theil/ noch eine Schrifft vnd nicht mehr / auch in ziemlicher fürderlicher Zeit zulaſſen/ ꝛc. Idem quoad defenſiones reorum receptum eſt, *eadem Conſtit. artic.ſequenti* 74 ibi: Item ſo ein Beklagter Kundſchafft vnd Weiſung führen wolt/ die jhme von ſeiner verklagten Miſſethat entſchuldigen ſolte/ ſo dann der Richter ſolche erbottene Weiſung für dienſtlich achtet / ſo ſoll es mit Volnführung derſelben auch vorgemelter maſſen / etc. gehalten werden / atque hunc articulum valde commendat & allegat pro ſua ſententia, *Pet.Heig.part. 2.quæſt.16. num.*8.ubi ſtatuit, quod in cauſa veneficii, læſæ majeſtatis, hæreſeos, aliisque enormioribus ſuper criminibus proceſſus ordinarius ſit obſervandus, *Godelman.in tr. de Mag.& Venef.lib.3.n.19.*

9 Cæterum, quæri poſſet, quidnam † ultra duplicas ſit admittendum, utrum novum quid emergens, vel ex anteactis depromptum ſcripturæ genus? de priori nihil eſt addubitandum, quin admitti jure debeat, cum ſententia quoque lata retractari poſſit ob novas emergentes probationes defenſionis *Hyppol.de Marſil. in l.1.§.fin.num.54.ff.de qq. Gail.1. de pac.public.cap.18. num.*13. quidni ante quæſtionem vel ſententiam de torquendo reo? modo ca-
10 lumnia & fraus abſit, hinc vulgò dici placuit: Quod † quæ de novo emergunt, novo indigeant juris auxilio vel remedio, per notiſſima *c. paſtoralis ext. de except. Bart.in l.4.§. hoc autem, num.*7. *ff. de damn. infect. Gail.1.obſerv.cap*
11 107.*num* 8. Cum etiam in civilibus † admittantur inſtrumenta de novo reperta, licet jam in cauſa concluſum fuerit: Judex enim ad partis ſupplicationem cauſa cognita concluſionem reſcindere & novas probationes recipere poteſt. *Idem Gail.d.loc. n.*10. ubi in cauſis criminalibus nec non matrimonialibus hoc tanto fortius ſtringere contendit, quo periculoſius ſit, in cauſis

quod

tanti momenti, reos prævis [illegible] capti[illegible], relinquere inde-
fenſos. Atq; hinc recipi[illegible] † [illegible] cautela [illegible] 12
ſubnexa concluſivis ſcriptis [illegible] vel oblatione [illegible]
Cujus clauſulæ vigore ait, *Gail. d. loc. num. 5.* Sæpe [illegible]
re[illegible]ducitur, & ulterior facti probatio, quod in actis [illegible]
probatum non eſt, injungitur, quia virtute dictæ clauſulæ judicis [illegible]
imploratum cenſetur, unde illud meritò judex impartiri debet [illegible], &c.
vide Gilm. vot. Cam. 6. lib. 2. deciſ. 28. Conrad. Hartz. [illegible]
anonim. W. A. D. conſ. [illegible] *n. 28.* Alias regula eſt † Quod in criminalibus 13
quoad reum nunquam firmiter concludatur, *d. l.* [illegible] *B*[illegible] *l. ſi a-*
cuſatoribus, num. 19. C. de accuſat. Hyppol. de Marſil. in d. l. 1. [illegible] *63 ff. de*
qq. Bart. in auth. at qui ſemel, C. de probat. nu. 14. Proinde Cl[illegible] *61.*
in fine, exiſtimat † concluſionem in cauſa criminali ſupervacaneam eſſe & 14
haud neceſſariam, &c. de poſteriori itaque caſu eſt accipienda Conſtitutione
verba ejus ſint otioſa & ſine virtute operandi, *arg. l.* [illegible] *ff. de legat. 3.* Quæ-
cunq; enim per ſeſe conſtant & deciſione non egent, quia Solem [illegible]
ſtrare velle ridiculum eſt, *c. ſi omnia. 7. cauſ. 1.* [illegible] ea non [illegible]
tione & diſpoſitione legis noviſſimæ, ſed quæ obſcura & dubia er[illegible], nec non
requirentia aliquam juris declarationem, *l. ſi de, § cum verbis ff. de leg. 3. l. con-*
tinuus, [illegible] *ff. de V. O.* In ſpecie verò admittantur † adhuc nova 15
ſcripta, ſi quidem in duplicis nonnihil momenti ſingularis & ponderis alle-
garit reus, [illegible] extricare poſſet & [illegible] manus judicis, niſi obvietur con-
traria demonſtratione [illegible], ſolent † enim veteres advocati habe- 16
re in penu aliquam exceptionem ponderoſam, qua eludant adverſarium in
fine actorum, ad inſtar colluſorum, qui chartella victrici ſolent confundere
hoſtem, neque enim malitiis hominum eſt con[illegible]ndum, *l. in fundo, ff. de R.*
Vindic.

Si quæ alia † [illegible] prægnantiora in judicis arbitrio erit, quæ- 17
nam ſufficiens [illegible], cur ulterior agendi facultas ſit concedenda, uti & dila-
tiones & [illegible] judice conſtituentur, quas licet breviores eſſe velit Con-
ſtitutio, *d. art.* [illegible] non tamen dubium eſt, quin judex pro arbitrio ſpacium
terminorum pro re nata determinare & definire poſſit.
Menoch. cent. [illegible] *lib. 2. de arbit.* [illegible]
caſ. [illegible] *num.* [illegible]

CAPUT XXXVI.

DE INTERLOCUTORIA AN REUS SIT torquendus?

SUMMARIA.

1. *An concluſio ſit neceſſaria in cauſis criminalibus?*
2. *Parte alterâ abſente publicari poteſt ſententia criminalis.*
3. *An in cauſis indiciorum de torquendo reo ſententia ſit interlocutoria vel definitiva, & an citatio ad ſententiam requiratur?*
4. *An a ſententia de torquendo reo appellari poſſit?*
5. *Confeſſus non appellat.*
6. *In quibus maleficiorum cauſis non appelletur?*
7. *Argumentum a majori ad minus, locum habet in delictis.*
8. *Confeſſio non ſuffulta probationibus, revocari poteſt.*
9. *In notoriis non recipitur appellatio.*
10. *In notoriis non requiritur probatio.*
11. *Aliud eſt notorie conſtare de delicto, & delictum notorium eſſe.*
12. *An peremtoria citatio requiratur in præſenti caſu?*
13. *Ad publicanas atteſtationes non requiritur citatio peremtoria.*
14. *In judiciis omnia ordine & decenter fieri debent.*
15. *Stylus curiæ ubivis locorum eſt attendendus.*

QUanquam in capite præcedenti juxta Dd. ſententiam communiorem
1 diximus † non eſſe neceſſariam concluſionem in cauſa criminali per rationes ibidem allatas Conſtitutio tamen Caroli Quinti *d. art. 73. in fine*, formalem requirit concluſionem, quam meritò ſequamur ibi: So dann nun alſo die Kundſchafft verhöret/eröffnet vnd von beyden theilen ihr ein vnnd jureden eingebracht vnd beſchloſſen worden / etc. ubi *Gobler.* ibi: tum & ſcriptutis utrinque reproductis & exhibitis ad concludendum in cauſa, &c. Hac itaque concluſione in cauſa factâ, proximum eſt ut examinator teſtium, rotulum & ſcripta eidem annexa remittat committenti juxta diſpoſitionem, *Carol. V d. artic 73.* hic demum ad Academiam transferat acta integra pro concipienda ſententia interlocutoria vel definitiva, quam cum impetravit judex, citatis partibus publicabit, *l. ea quæ, Cod. quom. & quand. judex, cap. 1. in fine,*
2 *ext. de cauſ. poſſ. & propriet.* parte † alterâ abſente nihil obſtat, quo minus ſententia ſit publicanda, *l. in cauſæ cognitione, §. cauſa ff. de minor. l. ex conſenſu, § in ff. de appell.* etenim contumacis abſentia ſuppletur Dei omnipoten-
3 tis præſentia, *l. 13. §. 3. C. de jud.* Sed utrum † in cauſa indiciorum ſit partium citatio neceſſaria quæri utiliter poteſt Reſpondendum videtur quod non (1.) Quia ſententia interlocutoria non requirit citationem partium, *l. ... de a quo, ff. ad S C tum Trebell. Gail. 1. obſerv. 109. num. 2.* Sed hæc ſententia eſt talis, uti rubrica hujus capitis ſatis ſuperque indicat, Ergò. (2.) ...

rupto-

ſupremo Principis Conſiſtorio [illegible] eſt [illegible] partes [illegible] ad ſententiam audiendam, per tradita [illegible] *Gail. d.* [illegible] *n.* [illegible].

Reſp. ad 1. Diſtinguens inter [illegible] quæ habet [illegible] definitivæ vel puræ interlocutoriæ, quæ non [illegible] vel abſolvet cauſam principalem [illegible] ut propoſitio major non niſi de illa ſententia ſit intelligenda. Quod vero ſententia ſuper indiciis ferenda vel lata vim [illegible] præ ſe ferat, hinc [illegible] quet, quia quoties indicia pro non ſufficientibus ad [illegible] declarantur pronunciantur, reus abſolvitur, *uti in cap. antecedenti diximus.* Si abſolvitur vim definitivæ habet hæc ſententia. Ergo.

Ad 2. Reſpond. Quod in Camera Imperiali non citentur partes ad ſententiam audiendam, ratio eſt: Quia Domini [illegible] litis conſtituerunt ad acta ſuos procuratores, in quos, [illegible] teſtationem factos fertur ſententia, *Idem Gail.* [illegible] *num. 3. & 4.* Cum e contra in cauſis criminalibus rato [illegible] admittuntur procuratores, *Idem Gail. de pac. pub. cap.* [illegible] Conſtitutio Crimin. Carol. V. in genere hunc articulum attingit, ita tamen ut pro cujusque curiæ ſtatu, ſtylus & obſervantia attendatur *art.* 80 adde *art.* [illegible] quid autem termini conſtitutio, quæ in [illegible] favorem & juxta [illegible] nem [illegible] ſcita [illegible] ut plurimum ſolet induci & determinari, *Gail.* [illegible] *obſerv.* 53. [illegible] 4. planè in levioribus, & ad ordinationem judicii ſaltem conſtitutis articulis [illegible] eſt partium citatio, quid in rebus & cauſis tanti momenti? Quia [illegible] vel de torquendo [illegible] damnum irreparabile præ ſe fert, & ut diximus, vim definitivæ continet, *Mynſ. in* [illegible] *bus,* [illegible] *q.* 99. [illegible] obſcurè quoque [illegible] † ſenten- 4
tia de torquendo reo conceditur appellatio, *text.* [illegible] *l.* 2. *ff. de appel. recip. Bald. in l.* [illegible] *C. de app.* [illegible] *Aretin. in tr. maleſ.* [illegible] *fama publica.* [illegible] ſtat quod regulariter à ſententia condemnatoria non admittatur appellatio in criminalibus, *Clar. in pr. crim. lib. 5. quæſt.* 94. *vide* [illegible] *m.* 2. [illegible] *pior. in* [illegible] *pag.* [illegible]. Reſpondeo rationem [illegible] hæreſi in hoc: Quia ſententia condemnatoria [illegible] confitentem [illegible] feratur [illegible] fuerit. At † [illegible] non ap- 5
pellatur [illegible] & [illegible], *Clar. d. quæſt.* 94. Ergo. Neque præterea moveri [illegible] (2.) [illegible] (4.) [illegible] (3.) [illegible] non [illegible] appellatio à ſententia condemnatoria [illegible], *l.* [illegible] *C. quor. appel. non recip. &* [illegible] *Clar.* [illegible] *num.* [illegible] [illegible] omnes in hoc quod † [illegible] 6
appellationi [illegible] ce maleficiorum cauſis [illegible] negandum erit illi quod eſt minus, *arg.* [illegible] magis videtur [illegible]

7 *ſit long. conſuet. Bald. in l. 5. Cod. de Epiſ. & Cler.* ubi dicit: Quod † argumentum a majori locum habeat in delictis & pœnis, *cap. licet, ubi gl. [illegible] multo minus, extr. de [illegible].* Reſp. Similiter a diverſis inferri. Quod enim à ſententia torturæ paſſim appelletur, ratio hæc redditur, cùm torquendus pro convicto haberi non poſſit, longe minus pro confeſſo, uti de condemnato ad mortem revera dici poteſt. Sane ecquid injuſtius & intolerabilius appellationem recipi in cauſis planis & liquidiſſimis, ipſa quoque reorum confeſſione confirmatis, ut non pauci diſtinguere dubitarunt inter maleficia probata & ſimul confeſſata, & confeſſata quidem at non probata, adeo ut ſi ſuper ſola & nuda confeſſione ſtruatur ſententia, inde admittatur appellatio, non vero ſi concurrant & probatio & confeſſio rei, *Clar. d. loc. num. 1. Boſſ. in tit. de appel. num. 27. Bald. in l. 2. C. quor. appell. non recipiuntur*, ex quo
8 fluit fonte; Quod † confeſſio non ſuffulta probationibus, revocari poſſit, *qui de re sniſ a*, porro quod appellatio tum demum rejiciatur, quoties reus & convictus & confeſſus fuerit, quam ſententiam communem eſſe teſtatur, *Gomez. cap. 13. delict. num. 21.* & ad cauſam læſæ majeſtatis quoq; extendendam, *Idem d. loc.*

9 Alias dici ſolet, & jure verum eſt. Quod † in notoriis non recipiatur
10 appellatio, *Clar. d. loc. num. 2.* hinc eſt, quod † in notoriis non requiratur probatio, niſi reus factum prorſus negaverit, *Idem quæſt. 9. num. 6.* notan-
11 dum autem eſt, quod † obiter attingam, aliud eſſe, ſi dixero, notoriè conſtare de delicto vel delictum eſſe notorium, *vide Clar. d. 9. per tot.* Sed ut plura paucis comprehendam, inter ſententias interlocutorias, quas numero 5 recenſet Gylman. easque appellabiles, primum locum aſſignat caſui noſtro præſenti, ibi: Quod indicia ſint legitima ut reus torqueri poſſit, &c. *prædictus Gylman. in deciſ. cam. in Symph. tom. 2. pag. 319. & ſeqq. Aretin. conſil. 20.*

12 Alias quæri ſolet utrum † citatio unica ſufficiat, an peremptoria, ubi loco omnium una emanat citatio, mentione hac factâ, quod citatio ſit vice trium denunciationum? quæſtio eſt procul dubio ſine lite. Sed in eo hæret ſcrupulus an clauſula illa conſueta inſeri debeat citationi ad audiendam ſententiam in puncto torturæ: Ad publicandas atteſtationes vel videndum jurare
13 teſtes, citationem † peremptoriam neceſſariam haud eſſe docent, *Innocent. in c. ad petitionem, ext. de accuſat. Angel. in l. ad peremptorium, ff. de judic. Bart. in l. conſentaneum, & l. ſi finita, §. Julian. col. 41. ff. de damn. infect.* in præſentiarum requiri ſolennem iſtam citationem in propatulo eſt, [illegible]
14 in Eccleſia; ſic † in judicio omnia rectè & decenter fieri debent, *Felin. in c. ex literis, ext. de conſtit. col. 4. Boſſ. in tract. crim. in tit. de ſent. nu. 3. pag. mihi* [illegible]
15 Sed ſtylus † cujusq; curiæ vel loci hic maxime in Germania erit attendendus, cum ſtylus loci per omnia ſit ſervandus, *l. 1. §. ſed & ſimilitudinem,* [illegible]

vet. jur. en[illegible] l. fin. Cod. de [illegible] juſſ. [illegible] imperator, §. 1. ff. de appell. Bald. in l. ſi quis in fine, C. de bo[illegible] a[illegible]m[illegible]t. C[illegible] in l. 2. Cod. quæ ſit long. conſuet. text. in cap. ex parte, ext. de teſtib. ubi gl[illegible] A[illegible]bas Pan. in cap. penult. num. 11. extr. de except. nec refert, quanquam jus com[illegible] aliud ſt[illegible]tuat, *Felin. c. 1. n. 16. ut lite non conteſtat. deciſ. rotæ [illegible]5 & deciſ. 19. Abb. Panor. in c. [illegible] de appell. n. 9.*

CAPUT XXXVII.

DE TORTURA REORUM.

SUMMARIA.

1. *Torturæ definitio nullibi tradi[illegible].*
2. *Quare [illegible] inde nefas hominem torquere innocentem?*
3. *Lubrica & fallax eſt omnis quæſtio.*
4. *Quæ judex conſiderare debeat ante torturam.*
5. *Quæſtio[illegible] eventus apparet demum cum torquere c[illegible]peris.*
6. *An quæſtio infligi poſſit delatis de criminibus levioribus?*
7. *An & quando reus adhuc torqueri poſſit, leg[illegible] prob[illegible]tio[illegible] [illegible] convi[illegible].*
8. *Reus probati[illegible] [illegible] ſuperatis an de[illegible] per tormenta interro[illegible]?*
9. *Quæ de ſociis inſt[illegible]tuitur, leviſerit quæſtio nec iminanis.*
10. *Ratio exprimitur cur admittatur quæſtio in ſervos, alioſq; homines viles in nec[illegible] in alterius.*
11. *Diſcingendus, habetur pro diſcincto.*
12. *Perſonæ turpes & infames non admittuntur ad teſtimonia niſi adhibita quæſtione.*
13. *Iudex priuſquam torqueat reum, ante omnia conſideret & examinet indicia an ſint ſufficientia & probata ſufficienter.*
14. *Indicia quidem arbitraria ſunt, ſed arbitrium judicis ratione juris & conſilio peritorum debet eſſe inſtructum.*
15. *Qualia & quanta indicia requirantur ad torturam? alia qu[illegible] [illegible] eſt.*
16. *Qui judex [illegible] ne[illegible] torquet reum, dignus eſt ut v[illegible]rgis cædatur.*
17. *Conſiderandum eſt inſuper ante quæſtionem an delictum revera ſit patratum, quod quis confitetur.*
18. *M[illegible]a maximum eſt remedium iræ.*
19. *E[illegible]mplis illu[illegible]r[illegible]ribus declaratur, quam periculo[illegible] ſit torquere reos, priuſqu[illegible]m de delicto commiſſo conſtat. [illegible]tur, reus eſt.*
20. *Non qui accuſatur, ſed qui convinci[illegible]*
21. *I[illegible]tur ea[illegible], [illegible]ntia egregiis argumentis & [illegible]empl[illegible].*
22. *Den[illegible] bilt viro [illegible] confitente priuſquam t[illegible]queretur, qui innocens fuit.*
23. *A[illegible] reus [illegible] judici ſit confeſſ[illegible] [illegible]ndemnandus?*
24. *Non e[illegible] conf[illegible]o ni[illegible] quam accuſator eruit, reus negat, [illegible]tor exprimit.*
25. *[illegible] d[illegible] corporis [illegible] nolu[illegible], divi[illegible] [illegible] committendi.*
26. *Cur Deus plura, ſuo arcano judicio ſibi reſervav[illegible]rit?*
27. *Recenſentur exempla, quomodo nocentiſſimi ſæpe perpeſſi ſint tormenta atroc[illegible]ma, quibus veritas exprimi non potuerit.*
28. *Exempla alia re[illegible]itantur, quomodo fortitudine etiam innocetes ſuperarint torturam.*
29. *Quid judex faciat, [illegible] re[illegible] ſuſtinere cruciatus torturæ nec confiteri velle?*
30. *Exempla recitantur quomodo magicis artibus dolores torturæ rei fl[illegible] penderint.*
31. *Quænam verba & præſtigia [illegible]hibeant rei, ne loqui poſſint?*
32. *E[illegible]aminantur præſtigia ejuſmodi, an vel quomodo [illegible]ſi[illegible]ant.*
33. *Sathan nunquam prodeſt, ſi non malum ex mal[illegible] r[illegible]re [illegible]aleat.*
34. *Quod [illegible]ath[illegible] ali[illegible] procur[illegible]tor & defenſor rei innocentis [illegible], [illegible] affertur.*

 Infra,

INfra, Deo volente, dicam de appellationis proceſſu criminali, modo de
ipſa tortura loquar. Ut definitiones in jure ſunt periculoſæ, *l.* 202 *ff. de R. J.*
1 Sic torturæ † definitionem nullibi traditam eſſe refert *Boſſ. in tit. de tort.* [illegible]
ratio procul dubio hæc eſt illa in præſentiarū, quod criminaliſtæ [illegible],
ecquis propriè dicatur ſub quæſtione vel tortura confeſſus, quoties reus formidine
quæſtionis ultrò confitetur delictum, dici quidē poteſt, eum [illegible]
rore falſus eſt extra quæſtionem confeſſum eſſe, interim tamen hoc manet,
reum niſi territio immanis ſubindeq; terror panicus eum commoviſſet, haud
dicturum fuiſſe veritatem, *Gandin. de qq. & term. al. 6. verſ.* dictum eſt [illegible] ex
effectu paritas cauſæ arguatur, *Eberhard. in top. in loc. ab effect.* vice verſa conſiderandum
eſt, quod non quodlibet corporis tormentum, quæſtio dicatur,
Boſſ. d. loc. num. 11. hinc JCtus ait *in l.* 1. §. 23. *ff. de qq.* plerique tantæ [illegible]
& patientiæ, ut tormenta flocci pēdeant: adeo ut definiri vix poſſit quis dicatur
tortus nec ne, vel quinam dicatur ſub tormentis confeſſus, &c. Hæc ut
ventilari poſſunt, res eſt expedita: Sive enim quis metu tormentorum [illegible]
tur delictum, quæ ſpecies uti ab ipſa tormentorum adhibitione omninò diſtinguitur,
ſic confeſſio ſubinde expreſſa metu tormentorum rectius dicitur
facta, ita adhibitis fidiculis vel tormentis confeſſio ſub quæſtione facta dicetur,
uti paſſim hæc quidem fine & effectu non diſtinguuntur [illegible] &
medio diverſo hic ſuboriente nonnihil dici poteſt diverſitatis, ſaltem ut [illegible]
quemadmodum dixi, conveniant, *vide Boſſ. d. loc. p.* 173.

Sed omiſſis ambagibus ad rem ipſam progrediemur, torturæ definitionem
iis explicandam relinquentes, qui magno ſuo incommodo ſunt experti,
quid quæſtio ſit vel tortura, hoc conſtat quæſtionem propriè vel torturam
non dici, niſi quæ tormentis & corporis doloribus adhibetur, *l.* 15. §. 41. quæſtionem
intelligere debemus ait text. tormenta & corporis dolorem ad eruendam
veritatem, *l.* 1. § *in quæſtionem, ff. ad SCtum Silan.* [illegible] quæſtiones dicuntur
ſupremæ anguſtiæ & graviores utriuſque [illegible] abſciſſione [illegible]
vell. ut nulli judic. &c. & c. cum in contemplatione ext. de R. J. [illegible]
cuntur permagni corporis dolores & afflictiones *& gloſſ.* [illegible] *de qq.*
atteſtatur ſæpenumero adhibitis flammis quæſtiones [illegible], qua de
re. & immanitate quæſtionis loco dicemus decentiori. [illegible] autem oportet
judicem, & quâ poteſt ratione prævidere, ne temerè & injuſtè quæſtioni
reum tradat, cum ipſemet inde in diſcrimen & corporis & animæ poſ-
2 ſit incidere, ecquid † enim atrocius hominem ad Dei imaginem conditum
tantopere carnificare immeritum, innocentem & [illegible]
3 tem ad deſperationem vitæ adigere, lubrica † enim & fallax eſt omnis quæſtio
etiam ſumma induſtria & diligentiâ præ[illegible] & tandem [illegible]
d. §. 23 *ff. de qq.* in qua tragedia lugubri, [illegible] prædicamenta, duo
potiſſimum occurrunt perſonarum genera, [illegible] quædam ſunt [illegible]

[illegible]

patientes, ut Ulpian. *dict. loc.* ait: qui quodvis mentiri magis, quam tormenta pati velint, (2.) quædam tam duræ cervicis, ut tormenta contemnant, quibus veritas nullo modo poteſt exprimi, quæ perſonarum diverſitates accuratè ſunt perpendendæ & explorandæ, quâ in parte nonnulla dicenda ſunt, utrique parti communia, & nonnulla parti cuique ſeorſim peculiaria, &c. In genere autem notatum eſto: Quod † judex ante omnia conſiderare debeat, 4
ſitne delictum ita comparatum, ut corporis pœnam afflictivam vel ultimum ſupplicium præ ſe ferat, etenim abſurdum foret, reum nōdum criminis convictum, afficere majori quæſtionis acerbitate, quam præ ſe ferebat ipſa maleficii pœna, hinc non pauci ex noſtris ſtatuerunt, nedum in vulgaribus delictorum ſpeciebus admittendam quæſtionem, ſed in exceptis ſolummodò, quam ſententiam tamen repudiavit ſententia communis & regularis, Dd. opinio, *t. t. ff. de qq.* neque hic obſtat, quod in *part. 1. noſtrorum laborum* nonnulla indicia tradiderimus ad delicta minora, quæ quidem corporis coercitionem, at pœnam capitalem non requirunt? Reſpondeo, non inde indicia ejuſmodi in dictis locis eſſe relata, quaſi inde quæſtio confeſtim ſit formanda, ſed ut judex in puncto inquiſitionis ſpecialis vel interrogationum, *de quibus ſupra.* ſciat, unde vel capere vel examinare reos queat, deinde, ut judex in materia hac, pro cauſæ qualitate ad minimum terrere poſſit reos, quaſi eos ſit traditurus carnifici, qui eos excruciet & tormentis adhibitis examinet, hoc enim in cauſis maleficiorum, quæ quidem ultimum ſupplicium non ingerunt, fieri poſſe non dubito. Si enim æque intereſt Reipublicæ, ne delicta minora maneant quam graviora impunita, *l. 3. C. de Epiſc. audient.* eadem rationis conſequentia dictitat, ut qua pari ſeveritate quoque procedatur in facinoroſos, ne delicta etiam leviora ſint abſq; coercitione, & dum minus negligitur malum curandum, inde morbus naſcatur lethalis & incurabilis:

Helleborum fruſtra cum jam cutis ægra tumeſcit
Poſcentes videas venienti occurrere morbo.

Perſi. Satyr 5. Gail. 1. de p. p. c. 3. num. 11. Omne malum naſcens facilè opprimitur, inveteratum plerunque fit robuſtius, *Tac. 14. annal. Cic. 5. Philipp. Ælian. lib.* 14.

Quæ præbet latas arbor ſpectantibus umbras
Quo poſita eſt primum tempore virga fuit.
Tunc poterat manibus ſumpta tellure revelli
Jam ſtat in immenſum viribus aucta ſuum.

Quæ ratio, jusque inde reſultans, magis magisque dominatur in delictis reſpectu pœnarum indifferentibus & quaſi æquivocis. Sic cauſa furti capitalis eſt & non capitalis reſpectu diverſo. Ecquis verò dubitat indiciis furti apparentibus, furem quæſtioni non exponendum eſſe? Quin quod ſæpenumero in terminis quoq; delictorum atrociorum evadat reus tormentorum do-

5 lores aliquoties perpeſſus, in ſummâ quis † viderit quæſtionis eventum, priuſquam torquere reos cœperit? Si hoc ita eſt, uti verum eſſe apparet, quid-
6 ni † licebit terrore ſaltem reos criminis levioris, qui ſæpenumero, dum pericula ſibi imminere crediderunt, majora & deteriora, quam unquam extiti[illegible] maſſes, confeſſi ſunt crimina, uti id exemplis paſſim demonſtrari poſſet. Deinde animadvertere tenetur judex, utrum maleficium abſque quæſtione poſſit probari, cum enim quæſtio ſit cauſa fragilis & periculi plena, *d.l. 1. §. 23. ff. de qq.* ac non niſi in ſubſidium admittatur, deficiente ſcilicet probatione ordinaria & directa, *Ang. in l. fin. num. 5 Cod. de qq. Marſil. in l. 1. n. 7. ff. de qq. Boer. deciſ. 163. Idem Marſil. in pract. crim. §. nunc videndum num. 2[illegible]*
7 *ſil. crim. 51. num. 52. Damhoud. cap. 75.* Conſequens eſt † ne in criminibus notorietate vel probatione legitimâ manifeſtis, ulla quæſtionis habeatur ratio, niſi reus tam perfrictæ ſit frontis, ut quæ omnibus etiam in trivio ſint obviam, lippis & tonſoribus cognita, inficiari & negare non erubeſcat, neque enim hic reus protervus & pertinax eſt audiendus, ſed potius quæſtioni adhuc tradendus, ut non tam confiteatur maleficium, nempe ut ſatisfiat juſtitiæ & proceſſui, quam uti reo confitenti adimatur appellandi facultas, *Par. de Put. in tract. Synd. pag. 453. hinc Divus Ambroſ. ad Scapulam* quid amplius tibi mandatur, quam nocentes confeſſos damnare, negantes autem ad tormenta revocare, & Ambroſius ſermone 50. omnium ſupergreditur ſententiam quem ſua conſcientia & propria confeſſio damnat, *Bald. in l. 1 numer. [illegible] C. de juram. calumn. & conſil. 364. volum. 3. Carer. in pract. crim. pag. 21. Clar. in pract. crim. lib. 5. quæſt. 64.* Quapropter vulgariter dicimus. Quod confeſſus non appellat, nedum in civilibus, & refert *Joan. Papon. de arreſt lib. 24. tit. 9.* Quod Parlamentum Pariſienſe conſueverit reos etiam convictos torquere, quem explicare videtur velle, *Clar. d. loc.* quando docet † reum confitentem torqueri
8 adhuc poſſe vel ſuperatum probationibus, torquendum eſſe [illegible] Intellige autem hanc Clari traditionem quoties delictum [illegible] ſine ſociis patrari haud potuerit, vel urgentiores [illegible] non niſi junctis complicibus & ſociis commiſſum eſſe, *Clar. [illegible] numer. [illegible]* Communiter cautè hic tradere ſolent Doctores [illegible] licet proteſtetur, ſe non eo animo inſtituturum quæſtionem, ut exprimat reo confeſſionem denuò, vel [illegible] quod juri & æquitati [illegible] reclamet, [illegible] ſaltem ut de ſociis [illegible] interroget, &c. *Idem Clar. d. loc. n. eodem [illegible]* eſſet judex, qui torqueret aliquem, contra quem eſſet probatum [illegible] faceret cum proteſtatione, quod non intenderit eum torquere [illegible] debentque facere, [illegible] proteſtatio appareat in actis, [illegible] interrogaretur ſuper crimine [illegible] de quo eſſet confeſſus [illegible] [illegible]

[illegible]

vel ſaltem non poſſet in pœnam ordinariam condemnari. Obiter hic monendum eſt, quod practica hæc Clari non tuta admodum cenſeri poſſit, etenim indicia, quod attinet, ipſa quidem purgari conſtat, quæſtione, quam ſuſtinuit reus & nihil faſſus eſt, an verò probationes directæ eodem modo evacuentur inficiatione reorum tormentis vallata, eſt quod prorſus dubito, imò hoc inconveniens fovere hanc adſertionem exiſtimo, quod reus doloris patiens, vir robuſtus & ferreus in genere ad auxilia ſociorum ſeſe referre poſſit, & legitimis probationibus convictus, ſeſe per obliquum proſtituere quæſtioni, & hac cautela demum evadere pœnam ordinariam, uti ipſe confitetur *Clar.* implicitè, ſed quorſum hæc verſutia & malitia hominum, cui indulgendum non eſt, hinc callidus ille, cujus meminit Farinac. rogatus cur tot tormenta ſuſtinere potuiſſet cum tamen nocens & reus eſſet, reſpondit longè melius & ſatius eſſe perdere brachium vel pedem, quam caput. De examine ſociorum infra erit dicendi locus opportunior, hoc conſtat, quod † ſiquidem ſociorum 9
reſpectu, quæſtio fiat, quæſtio mediocris & levis eſſe debeat non atrox & immanis, quaſi reus de facto proprio examinaretur. Etenim regula trita eſt, quod nemo in alterius caput torqueri debeat niſi ſervus, *vide prolixe Farin.*

Porrò ſi ſervus † torquendus ſit, is modicè torqueatur, ratio verò cur 10
reus in necem alterius quæſtioni ſubjugetur, eſt hæc, quoniam inſtar ſervorum quivis notatus vel facti vel juris infamia, torqueri poſſit, quoties teſtis productus vacillat, qui tamen ſcire veritatem præſumitur, *Bart. in l. [illegible]. ff. de qq. adde l. ob carmen, §. ſi ea, ff. de teſtib.* Atqui reus convictus criminis, qui nunquam condemnatus non ſit, facti infamiam patitur, *Do. in d. l. ob carmen.* Ergò hinc uti cingendus pro cincto, ſic † diſcingendus pro diſcincto jure 11
quoque eſt habendus, quia contrariorum contraria eſt ratio, *Eberhard. in top. in loc. à contr. gloſſ. in l. 3. §. lege Julia, ff. de reſtit.* quæ vult † perſonas turpes 12
non admitti ad teſtimonia ſine quæſtionibus, *gloſſ. in cap. per tuas in verbo adminicula, extr. de Simon. Cephal. conſil. 61. verſ. preterea, Alexand. conſil. 11. vol. 2. & Fulgoſ. conſil. 173.* expreſſè loquitur de ſocio criminis, ne admittatur hoc pacto ſine tortura, quam ſententiam communem eſſe ait, *Boſſ. in tit. de tort. teſt. num. 3.* ibi: & ideò quotidie vidi ſub fundamento poni ad torturam ſocios criminis & infames, in caſibus, in quibus ad teſtimonium admittuntur, concurrentibus tamen iis, quæ faciunt eos idoneos ad torturam juxta latè ſupra tradita, *in d. 7. q.* & quæ dicit, *text. in cap in fidei de hæret. in 6. & text. & gl. in d. cap. per tuas de ſimo.* ne tortura ineptè inferatur contra, *l. 1. Cod. de jur. cal. palam* alii tradunt expreſſè quod infamis infamia facti conſtitutus de facto admittatur, ſed cum tormentis; hæc ille. Sed hac de re prolixius *Farin. c. c. ſeqq.*

Porrò trutinari † tenetur judex, an indicia quæ adferuntur, ſint decenter probata & quæſtioni ſufficientia (1.) depromendum eſt ex ſuperioribus 13

bus, quæ de probatione indiciorum diximus (2.) definiendum ex aliis cauſarum figuris, ut intelligamus modò: indicia † arbitraria eſſe, ambigi non
14 poteſt, *vide Clar.lib.5.§.fin.quæſt.64.nu.* 14. quod arbitrium ratione recta inſtructum eſſe oportet, ne judex faciat litem ſuam, & noxium ſe præſtet profuſi ſanguinis juſti, *Marſil.in l. quæſtionis modum, num.71.ff.de q[illegible]* [illegible] Quod arbitrium hujuſmodi non niſi ex conſilio peritorum conſtare debeat, intellige non tam quoad probationem, quam numerum & potius [illegible]ram & pondus indiciorum, poſterius quod attinet, (prius ut dixi, ſuprà eſt luculenter enodatum) admittit communem illam diſtinctiunculam, an indicium ſit propinquum adeoque quoad probationem ita comparatum, ut depoſitio teſtis unius immediatè & recta delictum collimet, ut cum teſtis unicus de viſu deponit ita, quod viderit Titium occidiſſe Sejum, Titium contrectaſſe res Mævii, Titium falſum commiſiſſe, adulterium, inceſtum, ſodomiam patraſſe, &c. hæc depoſitio (inquam) procul omni dubio quæſtionem generat, modo teſtis ille vir fidei rectæ & integræ, *vide prolixiùs p. 1. de ind.gener.cap.* 4. vel indicium remotum, *Clar. d.loc.num.* 15. *Bart.in l fin.num.6. ff.de qq. Boſſ.de indic. num.* 71. *Blanc. de indic.num.* 15. *Villalob.comm. opin. lit. I.num* 17. *Aretin.in §.fama publica.n.* 52. *Alexand. conſil.* 77. *n* 12. *volum.* 1.
15 quod indiget † examine altiori, nec unicum ſufficit niſi plura concurrant, non quidem ex numero indiciorum generalium prout ea, *part.1.noſtri tractatus*, deſcripſimus, ſed quæ partim depromuntur ex claſſe indiciorum ſpecialium, uti hæc ſimiliter tradidimus & applicavimus cuivis delictorũ ſpeciei. Doctores licet hic ſummopere laborent & diſcrepent uti videre eſt, *Clar. d. loc.* & nonnulli in ea opinione ſint conſopiti, exiſtimantes indicium unicum remotum etiam ſufficere quæſtioni, & quæ præterea, *Clarus d.loc.nu.*15. non tamen amplecti poſſumus in cauſa hac adeò gravi & ardua hanc fluctuantem opinionem & judicium hinc inde vacillans. Statuimus itaque ad minimum requiri indicium propinquum unum, idque ſufficienter probatum, ſ[illegible] excipe indicium, quod recta collimat ut modò diximus & probat indicium depoſitione unius teſtis, qui de viſu facti deponit, & deinde indicia duo vel plura remota, quæ ſtringunt, & quadrant delicto, & familiaria ſint ſpeciali illi indicio unico, vel ſiquidem unum occurrat indicium generale idque in ſpeciale indicium quaſi influat, cum genus & ſpecies ſe arguunt mutuò, & [illegible] ſpecies ſuas comprehendat. *Bald.in l.* 12. *ff. de ll. Socin.ſen. in l.eum a-*
16 *[illegible] ff.de cond.& demonſt. Anton.Quett.[illegible]*.1. Cæterum qui † [illegible] ne-[illegible], [illegible] vel ſtipes [illegible] præcedentibus [illegible] de [illegible] quæſtioni ſubjugaverit, dignus eſt ut virgis cædatur [illegible] infamiæ [illegible] [illegible] indicia [illegible] [illegible] in cauſa læſæ majeſtatis ſtringere dicit. *Clar.[illegible]*
Denique conſiderandum eſt, utrum † etiam delictum de quo [illegible]
[illegible]

ſtio, fuerit patratum nec ne? cum non entis non ſint qualitates, *l.1.§.illud, ff. ad SCtum Sylan. ſupra latè cap.2. Clar. in pract. crim. §.fin. q. 4. num.* 1. ibi: ut ſcilicet reus non ſubjiciatur torturæ, niſi prius conſtet delictum eſſe commiſſum, quod adeò verum eſt, quod etiam ſi reus confiteretur delictum aliquod commiſiſſe non poſſit condemnari, niſi de ipſo delicto aliter, quam ex ejus confeſſione appareat, *Idem d. loc. quæſt.* 55. *& q.* 64. *num.* 2. obiter verò hic notatum eſto, quod ad effectum inquirendi ſola & nuda ſufficiat criminis relatio niſi quoad delicta facti permanentis, ex quo remanent veſtigia maleficii vere patrati, etenim hoc caſu ante capturam nonnihil fidei faciendum eſſe judici. res & ratio juris dictitat, *vide Clar. d. quæſt.* 4. *num.* 4. *& ſeqq.* feſtinatio præceps utplurimum nocuit, quia juſtitiæ noverca eſt, quæ comitem pœnitentiam ſemper juxta ſeſe habet: maximum † eſt remedium iræ mora, in 18
quit, *Seneca* 2. *de ira cap.* 28. imò temeritas ut dicebat *Paulus Æmyl.* præterquam quod ſtulta, etiam infelix eſt, *Liv. lib.* 22. Anniball † à Petilia claſſe 19
Africam repetens freto appulſus, dum tam parvo ſpacio Italiam Siciliamque inter ſe diviſas non credidit, velut inſidioſum curſus rectorem interemit. poſtea diligentius inſpecta veritate tunc abſolvit, cum ejus innocentiæ nihil ultra ſepulcri honorem dari potuit, *Valer. Max lib.* 9. *c.* 8.

Sed ut ut ſit, iſta Clari ſententia, ſatius videbitur, vel magis officio ſuo ſatisfeciſſe judicem, dummodò fama publica clamitante & quod magis eſt accuſatore confeſtim offerente ſatisdationem, cum inquiſitio iſta de veritate delicti commiſſi ſæpe requirat altiorem indaginem qua pendente reus dilabi poterat citius quam erat credibile. Priorem vero ſententiam utpote veriorem *& Conſtit. Crim Carol V. artic.* 20. ibi: Wo nicht zuvor redlich Anzeigung, der Miſſethat vorhanden, darnach man fragen wolte, ſoll niemand gefragt werden, ꝛc. Conſequentaneam omninò amplectitur qui aliter procedit judex equum cauda frenari & poſt quadrigas caballos jungere dicitur, taceo quæ incommoda inverſo hoc unico paſſim & toties ſunt ſubſecuta, de quibus paulo infra: hinc apud Achillem Statium Clinius Clitophonte falſi de ſe confeſſum defendit, & innocentem aſſerit, ea potiſſimum ratione, quod Leucippes occiſæ corpus aut cadaver nuſquam appareret, *Stat. lib.* 7. *de amore Clitop. & Leucipp.* hoc præmittendum eſt, ait *Ann. Robert. lib.* 1. *rer. judic. cap.* 4. *pag* 50 quoties de criminali & extraordinario judicio agitur requiri, ut judicibus liquidò certaque probatione de crimine conſtet: Si de cæde judicium ſit, & occiſi hominis mors vindicari debeat, potiſſimum illud eſt, ut de cæde & homicidio liqueat? idque Ulpianus Juriſconſultus prima & neceſſariæ inquiſitione requirit, ac niſi occiſum eſſe certo conſtet, hominem non haberi de familia quæſtionem aſſerit. Apud Tacitum in ſeditione legionum pannonicarum Vibulenus miles gregarius, at Blæſum exercitus legatum apud legiones accuſaret, periculoque & invidiæ exponeret, quærebatur fratrem

ſuum

ſuum proxima nocte per gladiatores Blæſi jugulatum. Adſtit Tacitus, actum propere, neq; corpus ullum reperiri, neq; illi fuiſſe unquam fratrem, promotuiſſet haud multum ab exitio legati aberat. At ſi in ipſo ſeditionis æſtu cadaver occiſi requiri & exhiberi oportuit, priuſquam cædes crederetur quid non judicibus illis imputari meritò debet, qui nulla cęde facta, nulla cadaveris perquiſitione, Titium cædis damnaverunt?

Hactenus de notis generalibus dixiſſe ſufficit, in particulari conſiderandus eſt ipſius quæſtionis modus (de gradibus torturarum cap. ſequenti dicemus,) qui vel remiſſior vel intenſior eſſe debet, reſpectu quæſtionis exponendorum, *l.1. vol.23 ff de qq.* quorū quidam molles ſunt & doloris impatientes, qui quodvis mentiri, quam tormenta pati volunt, ut JCtus Ulpianus *d.l.§.23.* quidam ſunt duri & aſperi ſocii, qui tormenta contemnant, ita ut veritas illis exprimi non poſſit *d.§.23.* de illis dicendum eſt primo loco. Sanè enim quæſtio res fragilis eſt dicente eodem Ulpiano, ita confeſſio hiſce hominibus expreſſa quoq; lubrica & fallax exiſtit, ut prudenter reſponderit idem Ulpianus *l. de confeſſ.* non ſi tem habendam eſſe, qui dixerit ſervum ſe occidiſſe nili quoq; conſtiterit de ſervo occiſo, *hinc Robert d loc. pag.* 51. Ipſa quidem confeſſio probationis neceſſariæ principium eſt, ſed non plena & abſoluta probatio, quæ ad pœnam & damnationem ſufficiat, *Calphurn. Flaccus apud Quintil. declam.* 314 ſimiliter confeſſionem appellat ſuſpectam & fallacem, & vocem putam doloris, extat quoq; hanc in ſententiam conſtitutio vetus Caroli Magni, relata à Roberto *d. l. loc.* quæ dicit, quod oportet omnia primo diligenter inquirere, ut cum juſtitia definiantur. Nullus quenquam ante juſtum judicium damnet, nullum ſuſpicionis arbitrio judicet, prius quidem

20 probet, & ſic judicet. Non † enim qui accuſatur ſed qui convincitur reus eſt, peſſimum namque & periculoſum eſt, quenquam de ſuſpicione judicare, in ambiguis, Dei judicio ſemper reſervetur ſententia. Quod certè agnoſcunt, ſuo, quod neſciunt, divino reſervent judicio, quoniam non poteſt humano condemnari examine, quem Deus ſuo judicio reſervavit, &c. Pulcher quoque locus eſt Ammiani Marcellini *l.b.* 21. ubi Conſtantinus Imperator de hujuſmodi confitente reo agens, deſinite, ait, hominem urgere, quem quidem exiſtimo ſontem, non verò condemno reum, priuſquam apertè fuerit convictus, *argum. l. 1. §.27. ff de qq. ibi* Si quis (vel ultro ſiteris. ureis ſignanda interrabiet transcribere volet) de maleficio fateatur, non ſemper ei fides habenda eſt nonnunquam enim aut metu aut qualibet de cauſa in ſe confitentur, & extat Epiſtola divorum fratrum ad Voconium, qua continetur, liberandum eum, qui in ſe fuerat confeſſus cujus poſt damnationem de innocentia conſtitiſſet, cujus verba hæc ſunt: prudenter & egregia ratione humanitatis charitiſſime, punitis eum ſervum, qui homicidium in ſe confingere metu domini revertendo ſuſpectus eſſet perſeverantem, ſiſtis demiſſionem ſe,

damna-

damnâſti quæſiturus de conſciis quos æquè habere ſe commentitus fuerat, ut ad certiorem ipſius de ſe cōfeſſionem pervenires, nec fruſtra fuit tam prudens conſilium tuum, cum in tormentis conſtiterit, neque illos ei conſcios fuiſſe & ipſum de ſe temerè commētum, potes itaq; decreti gratiam facere & eum per officium diſtrahi jubere: conditione additâ, ne unquam in poteſtatem domini revertatur, quem pretio recepto, certum habemus libenter tali ſervo cariturum, *hæc Ulpian. d. loc.*

Huic aſſertioni † applaudit dictum Tertulliani *in Apolog. cap. 3.* Quan 21
quam de nocente cognoſcatis & cōfitente, non confeſtim tamen ea, quę faſſus eſt pro veritate habeatis niſi & conſequentia exigatis, qualitatem facti, numerum, locum, tempus, conſcios ſocios, cui ut ſatis fiat admonitioni, medeatur incommodo, ex falſis propulſant confeſſionibus, error hic judicum eſt corrigendus, quem quoque deplorat, *Clar. in pr. crim. quaſt. 64. num.* 2. ibi: ſtatim quod aliquis dicit ſibi aliquid ſubtractum fuiſſe, abſque eo quod aliter conſtat, torquentur ſuſpecti, eundem accuſat errorem, *Caſon. de indic. pag. 76.* Scilicet, ut priuſquam torqueatur reus, de criminis veritate infallibiliter habeat cognitionem judex, nec unquam motu proprio ad quamvis interpellationem prorumpat ad torturam, perbellè & graviter *Clar. d. quaſt. 5.* ibi: ex officio inquirere & procedere non ſufficit dicere, quia ille eſt unus ex caſibus in quibus eſt permiſſa inquiſitio, neque quod contra eum eſt aliquod indicium etiam proximum maleficio, &c.

Tragica paſſim extant monumenta & veterum & recentiorum exemplorum, unde ſatis ſuperque colligitur ex ſola intermiſſa inquiſitione, de facti veritate tam inſigniter lapſum fuiſſe ſæpe magiſtratum. Martianus Thrax. qui poſtea Imperator fuit, cum quendam recenter mortuum chriſtiana pietate ſepeliveret, homicidii accuſatus eſt, & cum multa urgerent indicia, damnatus fuit, capitisq; pœnam ſubiiſſet, niſi eodem temporis momento verus cædis auctor deprehenſus, Martiani caput liberaſſet. Sic Marci Agrii ſervus, qui Titi Fannii ſervum occidiſſe falſa ſuſpicione exiſtimabatur, ea de cauſa tortus à domino, extremo tandem ſupplicio fuit affectus. At qui cæſus credebatur, paulò pôſt reverſus eſt, *Valer. Max.* 8. *cap.* 4. Nec diſſimiliter de milite refert Seneca, qui cum ex commeatu ſine commilitone rediiſſet, & crederetur commilitonem occidiſſe, damnatus extra vallum deductus eſt. etiam cervicem porrigebat, cùm ſubitò apparuit commilito, qui occiſus videbatur. Apud Heliodorum Charidea cum Theageni ſuperſtes eſſe nollet, venenum ſe miſcuiſſe fatetur, & ut venefica damnatur, *Heliod. in hiſtor. Ætiop. lib.* 2. Alexander ille Luciani & impoſtor cum paphlagonem quendam, cujus filius multò tempore abſuerat, dolore incredibili magnoque animi mœrore agi videret, & de diutina illa abſentia, tanquam vates à patre conſuleretur, duos indicavit ſervos, herilem filium interemiſſe mentitus eſt. Servis jam ſuppli-

cio affectus, filius poſtea vivus & incolumis ad patrem reverſus eſt. Voctan
in Callimachum quendam invehitur, qui cum ancillam Cratini in domo
quadam occultaſſet, dominum criminabatur, quaſi barbarâ crudelitate ancil-
læ caput ſaxo contriviſſet. Detecta eſt tandem calumnia, & abſolutus Crati-
nus, cum ancilla & viva reperta eſſet & incolumis in judicium deducta. Di-
vus Athanaſius accuſatus eſt, quod Arſenium, abſciſſa prius manu interfeciſ-
ſet, at ille vivus poſtea apparuit, ejusq; præſentia Athanaſium gravi calumnia
liberavit, inter Senecæ controverſias proponitur fratris cujuſdam calumnia,
qui fratrem & parricidii accuſaverat, & confictis probationibus damnave-
rat, ſed cum diebus feſtis pœna ex lege dilata eſſet, pater ſalvus rediit. Idem
de Jacobo Fuſcaro Venetorum Ducis filio, errore non diſſimili contigiſſe
narratur, ille graves cum Hermolao inimicitias multo tempore exercuerat,
Hermolai occiſi cadaver reperitur incerto ſceleris auctore, Fuſcarus non ple-
na quidem facti probatione ſed fallacibus præſumtionum indiciis cum pre-
meretur, in Cretam inſulam relegatus eſt. Mortuo ex tædio carceris Fuſcaro,
verus cædis auctor, qui ſe in monaſterium quoddam abdiderat, cum morti
proximus eſſet, ultrò fatetur cædem illam Hermolai, inſcio & ignorante
Fuſcaro olim à ſe perpetratam, *Fulgoſ. tit. 8. de ingiuſt. cap. 4. Bapt. Eg-
nat. lib. 8. cap. 2. de exempl. Ill. Vir. Venet.* Exempla recentiora & domeſtica
referre nolo, ne nimium ſim prolixus, *vide interpretes poſt Bull. ad Conſtit.
Crim. Carol. V. artic. 33. vide p. 1. de in dic. generalib. c. 15. alias Paris de Puteo*
22 *tract. Syndic. in verb. tortura.* Meminit † nobilis cujuſdam [illegible]
cionis inſimulati, qui licet innocens eſſet, uti eventus dedit, ita tamen ſe præ-
buit, cum inſtrumenta tormentoria ſaltem videret, quaſi reus eſſet certiſſi-
mus, qui ultrò quoq; falſus eſt ea, quæ non perpetraverat, hinc increbuit quæ-
23 ſtio vulgata: Quod † ſi reus aliquis ſeſe ultro deferat magiſtratui, ut ſupplı-
cium de ſe ſumat. Exempla ad hanc quæſtionem ſpectantia, aliquot relata
ſunt *ind. c. 15 part 1. ind ic.* Reſp. Quod ſimiliter incumbat judici inquiſitio
de facti veritate, *l. 1. §. 27. ff. de qq* cumprimis autem indagandum, an reus ſeſe ita
24 offerens ſit ſanæ mentis nec ne? Neq; † enim eſt [illegible] ait *Seneca
contr. 8.* niſi quam accuſator erurit, reus negat, & tortura exprimit, & *Quintil.
declam. 314.* ea natura eſt confeſſionis, ut poſſit videri demens, qui de ſe con-
fitetur, furore impulſus eſt, alius ebrietate, alius errore, alius dolore, quidam
quæſtione, &c. Sed tantum de confeſſionibus metu tormentorum [illegible]
ſequitur ut nonnihil dicamus de his, qui indurati ſunt tantaque cruciatus pa-
25 tientia pollent ut tormenta non curent & ſic proſſus confiteri nolint. Hi
divino judicio ſunt committendi, quod minime evitent ſontes, neque [illegible]
malum diu latet *Tiraq. de pæn. c. cauſ. 1.* vel ut in [illegible]
toller Hund lauffe nicht ſieben Jahr [illegible] in [illegible]
[illegible], *Plat. lib. 2. de juſto & [illegible]* tempus ſolum [illegible]
[illegible] dic.

Ripe-

Repetunt proprios quæq; recurſus
Reditúq; ſuo ſingula gaudent.

Hinc aliud germanicum Gott ſiehet es / Gott weiſſ es / Gott richtet es. Alias trinas ſuſtinens quæſtiones rigoroſas abſolvitur, judex, qui καρδιογνώστης non eſt. huc uſque ſuum fecit officium, & tenetur id reſervare Deo, quod altiſſimus † graſſari malum propter hominum peccata voluit diutius. imò ma- 26
lum vivere ſinit in hoc mundo, ut induratus pereat ſine pœnitentia, mens quippe hominis indurati ad exitium ſeipſam impellit, *Sophocl. in Antigon. pag. mihi* 107. quod ſic exponit *Alphonſ. Toſtat. in Ma*[illegible] *tom.* 4. Deus ea aufert homini malo, quibus poſſet reſipiſcere & redire ad actus ſaniores ut ſunt rectum judicium & bonum deſiderium circa agenda. At permittit ſæpe Deus homini aliquid, unde puniatur proprio ſuo facto. *Idem in Paralipp. nu.* 207. malus malitia perit, quia nemo læditur niſi à ſeipſo, malitia eſt gladius improborum quo ſeipſos jugulant, *Idem cap.* 4[illegible]. *v.* 14. *Johan. de Pined in Job. tom.* 2. *cap.* 35. *idem d. loc. cap.* 34. *num* 9. Superbia ſuperbo nocet, eorumq; virga dicitur, *Ezech.* 7. ibi: egreſſa eſt quaſi gemma arboris frondo[illegible]r, contrita floruit virga, ſuperbus ipſa ſuperbia qua elevatur, malus malo, [illegible] ſuſtentabatur, opprimitur. *Idem Pined. tom.* 2. *pag. mihi* 107. & 1078. non [illegible]rum itaque ex lumine fieri umbras, ex die tenebras, & quę malorum mentes obraſcunt, ut quid agant vel ſtatuant, prorſus tandem ignorent, hinc ut diximus præcipitia pœnarum, præventiones ſuppliciorum privatæ.

Exempla † extant veterum & recentiorum factorum in hanc rem: Re- 27
fert *Valer. Max. lib.* 8. *cap.* 4. Quod cum Fannii ſervus Alexander in hanc ſuſpicionem Cn. Fulvii equitis Romani occiſi veniſſet, ſepties tortus pernegaverit ei ſe culpæ affinem fuiſſe, ſed perinde atque confeſſus & à judicibus damnatus & à L. Calphurnio Triumviro in crucem actus eſt. Item Fulvio Flacco cauſam dicente, Philippus ſervus ejus, in quo tota quæſtio nitebatur, octies tortus, nullum omninò verbum, quo dominus perſtringeretur, emiſit, & tamen reus damnatus eſt, cum certius, argumentum innocentiæ unus octies toties exhiberet, quam octo ſemel torti præbuiſſent. *Idem* † *Valer.* 28
Max. lib. 3. *cap.* 3. ubi de Zenone Philoſopho agit & ait hiſce verbis: qui quum eſſet in diſpicienda rerum natura maximæ prudentiæ, inque excitandis ad vigorem juvenum animis promptiſſimus: Præceptorum fidem, exemplo virtutis ſuæ publicavit. Patriam enim egreſſus in qua frui ſecura libertate poterat. Agrigentum miſerabili ſervitute obrutum, petiit tanta fiducia ingenii, ac morum ſuorum fretus, ut ſperaverit & Tyranno, & Phalari in veſanæ mentis veritatem a ſe diripi poſſe. Poſtquam deinde apud illum plus conſuetudinem dominationis, quá conſilii ſalubritatem valere animadvertit, nobiliſſimos ejus civitatis adoleſcentes cupiditate liberandæ patriæ, inflammavit, cujus rei cum indicium ad tyrannum manaſſet, convocato in forum po-

pilas, torquere eum vario cruciatus genere cœpit, ſubinde quærens quorum [illegible] conſilii participes haberet. At ille nec eorum quempiam [illegible] proximum quemque ac fideliſſimum Tyranno ſuſpectum reddidit, [illegible] que Agrigentinis ignaviam ac timiditatem effecit, ut [illegible] concitati, Phalarim lapidibus proſterneren. Sic is ergo unius [illegible] ſiti non ſupplex vox, nec miſerabilis ejulatus, [illegible] bis animum [illegible] mutavit. Cæterum [illegible] eodem in loco, ejuſdem nominis Philoſophus quem à [illegible] de cujus nece conſilium inierat, torqueretur [illegible] pariter atque [illegible] dorum [illegible] a conſciorum doloris vi [illegible] quod ſecreto audire eum admodum expediret [illegible] opportunum tempus anima [illegible] mihi quam & ipſe vita & ille corporis [illegible] lus Anaxarchus cum a Tyranno Cypriorum [illegible] nulla vi inhiberi poſſet, q[illegible] beribus invictus ipſe torqueretur, ad [illegible] tanti. Non erit inquit [illegible] ſuæ ditionis, [illegible] & [illegible] ejus ita patiens expuit, multorum [illegible] A[illegible] dri Regis [illegible] rum maris, ſyderum [illegible] mundi naturam prudentiſſime & [illegible] gloriloſus [illegible] in fortiſſime [illegible] Anaxarchus [illegible] In Theodori quoque [illegible] Hieronymus Tyrannus [illegible]

[illegible]

Tiraquell. de l. connub. 9. quæ ad mortem uſq; torta & cruciata conſilia Harmodii & Ariſtogonitenis de Tyrannicidio prodere noluit, quare Athenienſes eam honorare volentes (ne tamen ſcortum celebraſſe viderentur) animal ejus nominis fecêre, atque ut intelligeretur cauſa honoris in opere linguam addi ab Iphicrate artifice vetuerunt, quò ſpectant *Alciati in emblemat. verſiculis emblemate* 31. ibi:

Cecropia effictam quam cernis in arce leænam,
Hermodii (an neſcis hoſpes) amica fuit.
Sic animum placuit monſtrare viraginis acrem
More feræ, nomen vel quia tale tulit.
Quod fidibus contorta, ſuo, non prodidit illum
Indicio, elinguem reddidit Iphicrates.

Tertull. in Apolog. c. 49. ait hanc meretricem carnifice jam fatigata, poſtremò linguam ſuam cômeſtam, in faciem tyranni ſævientis exſpuiſſe, ne conjuratores confiteri poſſet. Et refert *Hieron. ad Innocent.* mulierem adulterii ream ſepties cruciatam fuiſſe, quæ cum confiteri nollet, vicisſe eam & impunè abiiſſe, cum tamen adulter ſub prima quæſtione delictum faſſus eſſet, *vide part. de indic. cap. 28. in fine*, adde quæ ſcitè adfert, *Silius Italic. lib. 1. de bell. punico* ibi:

Mens intacta manet, ſuperat, ridetq; dolores
Spectantis ſimilis, feſſoſq; labore miniſtros,
Increpitat, Dominiq; crucem clamore repoſcit.

Exempla recentiora tacebo, tamen referam, materiæ præſenti haud inconvenientia, experientiæ argumenta cotidiana ſuggerunt, quomodo & quoties, rei probationibus penè convictis, cruciatus quæſtionum parum vel nihil ſentientes, negare in totum indicia decenter contra ſeſe probata & ſic, confuſo judicio, ſæpenumero evadant pœnas emeritas, quà de re exempla aliquot congeſſit, *Zwinger. d. loc.* quo lectorem remitto, & *Wier. de præſtig. dæmon. lib 4. cap.* 10. Certè arcanum & ſecretum Dei judicium eſt, cum Diabolo tantum connivet, praviſque ejuſdem mancipiis tantopere debachari in juſtitiam, & eludere jus & judicium, unde *W ier. d. loc.* hominum impietate ſic merente, maleficos evadere impunitos ait, interim tamen certum eſt, Deum pro decreto ſuo inveſtigabili & judicio inevitabili, juſtitiæ legem ſæpè ipſummet exequi, ne malus exſultet & lætetur in malitia, quaſi non eſſet Deus, qui curam ſubiret rerum humanarum, ut Stoici ſomniabant, juxta illud Melanchtonis.

Non Deus eſt numen Parcarum carcere clauſum
Quale putabatur Stoicus eſſe Deus, &c.

Quinimò ut paſſer alligatus filo laxiori volare tentans ſpe autem eluditur, & medio volatu impeditur, ſic Deus Dæmonem ejuſq; miniſtros utplurimum illudit,

[illegible], cum illorum facultatem tandem [illegible]
29 revocat. Sed † quid [illegible]
mus, inſolita hæc divina [illegible] ſupplicio [illegible], [illegible]
καρδιογνώςης, non homo: ut haud [illegible] cum Luthero dicamus in [illegible]
menſ. cap. 18. [illegible]
30 *vide Grilland.* [illegible]
[illegible]
[illegible] *rep.* [illegible]
[illegible] mulierem [illegible], quamquam [illegible]
[illegible]
[illegible]
[illegible]
to opere, [illegible] & [illegible]
gata. Similem [illegible] *Item* [illegible]
le Piſſ, [illegible] Alleliar, & Rome, [illegible]
[illegible]
[illegible] Du-
[illegible] Auditoris [illegible] con-
[illegible]
[illegible]
[illegible] ego [illegible]
[illegible]
[illegible]
[illegible]

eius convaluit, ade[illegible] [illegible] confeſſione [illegible] abſolvere. [illegible] exemplum [illegible], & [illegible] ille hiſce verbis [illegible] tum ad torturam & repetitis vicibus [illegible] Mariæ Virginis [illegible] & nullum dolorem [illegible] cta ipernere videbatur, & dormiebat [illegible] bus judicibus præſente procuratore Fiſcali examinatus [illegible] confeſſio extorqueri potuit, licet [illegible] illam [illegible] minaretur, cujus proceſſum vidi [illegible]. Aliud exemplum quid ſimiliter in facto accidit [illegible] quæ antequam elevaretur [illegible] elevata fuit, penitus quaſi mortua [illegible] vultu carbone [illegible], oculos extra caput valde [illegible] quaſi ſtrangularetur emittens, & nihil penitus loquebatur [illegible] &c.

Multæ enim [illegible] rationes etiam peremptoriæ occurrerent [illegible] *Waremund ab Erenberg* amicus noſter [illegible] *[illegible] cap. [illegible] num. 7[illegible]* cur exempla [illegible] credere [illegible] magicæ tribuentes, [illegible] Wierus [illegible] præſtigiis & fanaticis [illegible] pro [illegible] & rebus [illegible], in genere, [illegible] † incantamenta [illegible] verba [illegible] revereatur, [illegible] *Wier. lib. 4. cap. 4.* Quod ad taciturnitatem [illegible] tatis præſtent, [illegible]

Imparibus [illegible]
Diſmas & [illegible] eſt divina poteſtas
[illegible] damnatur, [illegible] ad aſtra levatur

Nonnulli uſurpant verba Davidis, ut: Eructavit cor meum verbum bonum, veritatem nunquam dicam Regi. Alii autem hac prece ſe muniunt: Quemadmodum lac [illegible] Mariæ virginis [illegible] Domini noſtri Jeſu Chriſti, [illegible] dulcis & [illegible] & [illegible]. Alii verò [illegible] hæc [illegible]. Jeſus autem tranſiens per medium illorum ibat, [illegible] ex [illegible] & [illegible] verbum bonum, dicam [illegible] Regi, [illegible] & os meum [illegible] bit veritatem [illegible] & [illegible] *vide Parid. de Puteo in [illegible]* [illegible]

fuit precatiunculæ remota [illegible] & [illegible], [illegible] diſcretus dijudicet ipſe, magicas incantationes [illegible] tarò [illegible] Magiæ tolli & curari poſſe, [illegible] *p. 2. de* [illegible] *gia*, ſubſiſtendum ergò erit, [illegible] & [illegible] mo, coram quo non conſtabit diu & hominum [illegible] & Dæmonum [illegible],
32 quantum quoque [illegible] bendum ligaturis [illegible] ſciat qui valet, [illegible] † qui pluſquam rationi humanæ communicatum [illegible] eſt & tantum ſenſui communi congruum, quod [illegible] ἐνεργεῖν [illegible] & operari non poſſint, [illegible] *Auguſtin. de Civit. Dei*, *cap.* 10. Verum quidem eſt, res [illegible] formas ſuas & virtutes conſequi ex corporibus cœleſtibus, [illegible] tificiales nullam ab arte virtutem [illegible] niſi quam ratione materiæ obtinent. [illegible] vel [illegible] principium, ideò nec [illegible] vir[illegible] [illegible] fectum appareat [illegible] id Dæmonum [illegible]

Dum hæc e [illegible] & [illegible] Andreas [illegible] frater meus amantiſſ. obvenit [illegible], cum arci Litzcoviæ præeſſet in Marchia [illegible] indubitatis [illegible] operatam, noluiſſe confiteri [illegible] & durius [illegible] alterà vice, cum tortura leviori premeretur, [illegible] & [illegible] veneficii facinora, cogatam verò [illegible] [illegible] qua [illegible] dolorem [illegible], Dæmonem ſibi pro[illegible] confeſſa illi, [illegible] S. Euchariſtia, in cuſtodia [illegible] [illegible]

33 Hæc [illegible] qui ſi [illegible] *dæmon*, [illegible] Adamis [illegible] licet [illegible] exemplum † [illegible] *à Wiero lib.* 3 *c.* 17. Sic fertur militarem [illegible] Marchiam [illegible], ac nummoſos loculos [illegible] decubuit æger [illegible] cuſtodiendos [illegible] hoſpita, [illegible] negat [illegible] hoſpitum [illegible] infirmi [illegible]

conjicitur,agitaturq́; ſententia ob illatam vim,illum gladio feriendum. Jam extremus dies judicialis præ foribus erat, ipſiq́; captivo moriendum eſſe in carcere nunciat Dæmon, ut ſi ſe ipſi dedere vellet,ut nihil ſit periculi ſe facturum pollicetur. In innocentia ſe mori malle reſpondet captivus, quam ea ratione liberari, propoſitâ denuò periculi immenſitate,ubi ſe aërem verberare & nihil perficere animadvertit, Dæmon gratis illi ſuam defert operam, qua apud adverſarios vindicaretur, conſulitq́;, quando judicio ſiſteris (inquit Dæmon) tum in cauſa forenſi prætendes inſcitiam,præſertim in dicendo,eapropter tibi patronum quem advocatum dicunt concedi orabis, atq; me non procul ſtantem pileo Cyaneo plumis inſignito,poſtulabis cauſę defenſorem: annuit captivus, qui poſtridie in judicium productus,cognita magiſtratus accuſatione & inſtituto,rogat ſibi in extrema illa neceſſitate permitti patronũ, qui conceditur. Multa diſputat hic Doctor Juris verſutiſſimus, & argutè defendit falsò accuſatum eſſe & condemnatum peditem, hoſpitem enim illi pecuniâ ſpoliato vim intuliſſe oſtendit,rem omnem ordine quo acta eſt, & ubi ſepoſita conſervaretur pecunia aperiens,hoſpite verò audacius inficiante & ſe Diabolo devovente imprecanteq́; aliquoties, ut ab eo ſuſtolleretur, ſi pecuniam haberet, deſtitit tandem à defenſione cauſæ legum Doctor pileolo cyaneo ornatus, ac hoſpitem abreptum per forum in aerem avehit, ut ubi manſerit, nemo cognoverit unquam, &c:hæc ille.

CAPUT XXXVIII.

DE GRADIBUS TORTURÆ

SUMMARIA

1. *De gradibus torturæ non poteſt tradi certa regula.*
2. *Nulla ſævicia eſt,nec impietas,ſævire in reos jure diffamatos.*
3. *Officium hoc inquiſitionale requirit,hominem ſtrenuum & ſeverum.*
4. *Iudex erit inſtar agri Narvienſis.*
5. *Referuntur exempla notabiliora,quomodo innocentes falſa ſæpe fuerint confeſſi.*
6. *Denudatio & ligatura minimum atque ſic territio,num ſic ſpecies vel gradus torturæ?*
7. *Reſolvuntur aliquot argumenta dubitandi.*
8. *Metus quanta paſſio,& quæ metus præ ſe ferat incommoda.*
9. *Metus futurorum eventuum quis?*
10. *Herculis adventus homines aliquot meticuloſos exterruit, ut animam exhalarent.*
11. *Homines molles & debiles quomodo examinentur?*
12. *An omnes mares in quovis animalium genere,ſint robuſtiores ſexu fœmineo.*
13. *Mulier cum examinanda eſt una cum aliquo viro, illa prius torquenda eſt.*
14. *Mulieres doloris ſunt impatientes & ad murmurandum faciles.*
15. *Mulieres apud Græcos olim ferro vendi potuerunt.*
16. *Vir præſumitur vivere diutius quam fœmina.*
17. *Impuberes & minores quomodo torqueantur?*

18. Torturæ quantus gradus deſcribitur.

19. Quouſque durare tortura magna debeat.

20. Inſcitia judicis eſt calamitas innocentis.

21. Hiſtoria recenſetur de judice sed ſcreto & perjuria.

22. Deſcribitur quintus torturæ gradus.

23. Quæſtiones regulariter ſiant in occulto.

24. Varia deſcribuntur tormentorum genera modo antiquata.

25. Quo tormenti genere olim Chriſtiani fuerint excarnificati.

26. Per fidiculas torquere, genus eſt antiquiſſimum torturæ.

27. Varia referuntur tormentorum genera & modi torquendi.

28. Iudex non excogitabit novos torquendi modos.

29. Non repetenda eſt quæſtio [illegible] indiciis repertis.

30. Quid ſi reus poſt confeſſionem ſub quæſtione factam, eandem deinde revocaverit?

31. Qui cogi poteſt ut confiteatur, cogi quoque debet ad perſeverantiam.

32. Quid ſi reus ſub tortura [illegible] inficietur factum, quod antea confeſſus erat?

33. Trina quæſtio quando demum ſit concedenda.

34. Reus nolens confiteri ſub tortura ter repetita abſolvendus eſt.

35. L. 1. § 23. ff de qq. declaratur variis & ſingularibus exemplis & hiſtoriis.

1 GRadus vel ſpecies † torturæ non tradi poſſunt certæ & determinatæ: Vulgò referuntur gradus quinq;, ut primus gradus ſunt minæ de torquendo reo, qui ſponte confiteri noluit, *Clar. in pr. crim. §. fin. quæſt. 64 n. 34.* neque enim crudelitatis & ſævitiæ argumentum eſt, ſed neceſſitatis & juſtitiæ ratio requirit, ut quoties ex confrontatione & reſponſione vel promiſſione gratiæ non poſſunt confundi vel convinci rei, demum & finaliter adhibeatur rigor & ſeveritas, *Boſſ. de exam. reor.* Secundus gradus eſt deductio ad locum torturæ, ubi inſtrumenta tormentoria reis oſtendantur, minis acerbioribus & atrocioribus repetitis. Etenim † impietatis nullius nec inhumanitatis opus eſt ſævire in reos, nedum perfecte convictos, *Farinac. de delict. & pœn. q. 17 num. 3 Vide* Reinking *de Reg. Secul pag. 2,5.* niſi enim haud liceret judici ſævitia hęc, ſi qua dicenda eſt, in genere quæſtionum remedia eſſent tollenda de medio.
3 Quod abſurdum eſt, quin quod totum † hoc officium requirat hominem conſtantem & ſeverum non mollem & lenem, qui vel planctu vel lamentatione moveatur, *cap. 3. quæſt.* [illegible] judex † hac vice imitetur potius agrum illum Narvienſem, qui imbribus efficitur ſiccior. Sic ille ad injuſtas querelationes & lachrymas crocodilizantis aridior erit & ſeverior, *Ioan de Pineda in Job. tom. 2. c. 18. v. 18.* modò tamen cũ rationis moderatione & judicii trutina diſcreta hæc & alia probè ponderet, experientia quippe rerum magiſtra toties [illegible] quoties comprobavit, terrore ejuſmodi nõ tam crimina paſſim prodita, quam nonnunquam confuſa judicia, uti capite præcedenti induximus exemplum Paride de Puteo nobilis alicujus innocentiam, qui mero terrore & pavore conſternatus falſo crimine confeſſus, *vid. Fulg. lib 8. cap. 4. Zwinger pag. 2[illegible]*, nihil hic de terrore, quo ſæpe homines [illegible] ſenſu, [illegible] tam, *vide Boſſ. de exam. reor. num. 4. Maſcard. [illegible] ff. de q[illegible]*

Et † *Zwing. refert in theatr. Hum. vitæ volum. 1. pag. mihi* 94. Par exemplum 5
Johannes Gorræus, ait, Pariſienſis medicus, is qui præclarum illud Medicinæ Lexicon edidit, cum à Meldunenſe Epiſcopo valetudinis ergo accitus domum reverteretur, ne quid periculi ſibi, religionis nominis ſuſpecto à Pariſienſibus ſub crepuſculum, quo urbem ingreſſurus erat, crearetur, zelo enim ſacro tunc univerſa ardebat Gallia, rheda Epiſcopi conſcenſa, in ea latebat. Pariſienſes quidam, creditores Epiſcopi cum debiti ſolutionem multo jam tempore fruſtra expectaſſent, rhedam invadunt, bonis, quæ illic veherentur per viatorem interdicturi, ea res tantum terroris Gorræo, qui ſe ob religionem peti exiſtimabat, incuſſit, ut in errorem mentis inciderit, nec niſi longo poſt tempore ſanitati reſtitui potuerit. Tertius Gradus † eſt denudatio corpo- 6
ris & ligatura manuum & pedum quaſi torquendus ſit reus, hæc dum peraguntur denuò interrogari debet reus & admoneri, ut confiteatur ne neceſſaria ſit ipſa realis quæſtio. Et licet non pauci criminaliſtæ tres torturæ gradus conſtituant ac proinde, hanc ligaturam, multo magis minas de torquendo, & deductionem ad locum torturæ, tanquam tormenti ſpecies rejiciant, *Clar. d. loc. n.* 34. dubium tamen non eſt, qui in effectu ut plurimum & non raro cauſativè veræ ſint quæſtionum ſpecies modo ſic nominati. Quia nihil intereſt, ſine metu ſive tortura ipſa exprimatur confeſſio reis, *Bald. in l. 13. in fin. C. de transact. Marſil. in l. 1. num. 5. ff. de qq.* neque † viciſſim obſtat, quod hæc 7
confeſſio potius ſit dicenda ſpontanea haud coacta & vi elicita & expreſſa confeſſio, *Clar. d. loc. num* 35. Reſpondeo, quod in civili cauſa quidem theoria illa ſtringat, in re criminali nequaquam, *t. t. ff. de qq. qui a re infra.* Vulgo quoque diſtingui ſolet inter neceſſitatem ex coactione inductam, quæ abſoluta dicitur, *gloſſ. in c. ſacris verbo coactio extr. de his, qui vi m. tuve. cauſ.* & voluntatem, quæ invictam habet cõditionem & qualificata dicitur, *Dec. in l. 4. ff. de R. J. Tiraquell. de pœn. cauſ. 36. num. 4.* quò quidam metum ſubintelligunt, qui in præſentiarum attenditur, nec uti in civili cauſa hic adſenſum explodit, cumprimis autem quoad ſpecies vel gradus priores duos Nam metus † trepi- 8
datio mentis eſt inſtantis vel futuri periculi, *l. 1. ff. quod met. cauſ.* qui licet in cauſa civili viciet & corrumpat actiones, conſenſumq; & voluntatem hominis excludat *l. 14. §. 3. ff. quod met. cauſ.* Quia omne violentum contrarium eſt ei, cui illud infertur, *Ariſt. 3. Ethic. 1.* & proinde & perpetuum dici non poteſt omne, quod metu exprimitur, quia aut expugnatur a reſurgente natura aut ſubigit naturam quieſcere neſcientem, donec ſe in nativam receperit libertatem unde. *Terent. in adelph. ibi.*

Malo coactus qui ſuum officium facit
Dum id reſcitum iri credit tantiſper cavet,
Si ſperat fore clam rurſum ad ingenium redit

Idem.

Pavor omnem ſapientiam examino expectaret
Vix ſum apud me, ita animus commotus eſt metu.

Quam ob rem hic ſæpè numero emergunt confeſſiones rerum, recantatio-
nes, revocationes, de quibus dicemus infra. Nihil ſanè hæc ad propoſitum,
quia à ſeparatis infertur, ad forum civile enim ſpectant hæc, non criminale ju-
dicium, ut infra dicetur pluribus. Standum ergo & quaſi anchoræ ſacræ inhæ-
rendum, confeſſioni factæ & acceptatæ donec legitimè reus vel errorem vel
innocentiam vel nullitates proceſſus edocuerit & demonſtraverit; uti ſimili-
ter audiemus infra. Neque præterea hic obſtat, quod futurum metum nemo
cogitet *Auguſtin. ſer. 1. poſt paſſ. dom.* 2. vel remota nemo timeat. ℞. Quod in-
ſtantis periculi metus requiratur ab Ulpiano *in d. l.* 1. isq; non unus ſed ma-
gnus, ut vitæ privatio, vel ingens corporis cruciatus, *d. l.* 1. (1.) Vitæ privatio
non quidem impendit reo torquendo, licet ex poſt facto, hæc ita prædicari
poſſit, ſaltem corporis cruciatus in conſideratione eſt, quæ in præſentiarum
ſufficit & quæſtionem ſubinde factam pro juſta & legitima agnoſcit, *h. t. de q.*
9 *q.* Quinimò † & falſum illud, futurarum metum nullum eſſe, *Covar. de matr.*
p. 2. c. [illegible] §. 4. num. 3. Cypræ. de Sponſ. c. 13. §. 14. n. 3. Gentil. de nupt. 2. cap. 10. Proin-
de dictum Salvatoris homines tabe perituros præ timore rerum expectāda-
rum. Cum & abſentia præſenti poſſint injicere metum, uti accidit illi quem
Herculis adventus in cavernas præcipitavit, refert *Arniſ. de jur. connub. cap. [illegible]*
pag. 209. Alius naturâ timidus & in ſpecu quadam latitans, cum ſpectaret
10 † fortè fortuna Herculem prætereuntem immodico metu exanimatus eſt, &
protinus diriguit in ſaxum verſus, quod adhuc viſitur ſpecie viri velut è ſpecu
proſpicientis, unde τὸν παρακύπτοντα ſaxum illud vocant, ut refert *Suidas &*
Zwing. in th. hum. vit. volum. 1. lib. 1. pag. mihi 93. (2.) ex hiſce argumentis
depromitur, quod diximus, nempe ex hoc torturæ gradu cauſativè exprimi
quoque confeſſiones reorum, validos & ſufficientes, quo ſpectat locus *Ulpian.*
in l. 1. §. 23. ff. de qq. dicentis reos impatientia doloris etiam pluſquam par eſt,
ſæpe confiteri. Quia quod in rebus civilibus ea, quæ metu [illegible], non
prorſus & abſolutè dicantur nulla, *l. 21. §. 4. & 5. ff. quod met. cauſ. [illegible] §. actio-*
num, num. 45. [illegible] de act. Beuſt. de matr. c. 44. Joan. Sneid. p. 1. de nupt. licit. n. 23.
Qui enim metu perculſus nonnihil dicit vel agit, licentiam habebat non di-
cendi, non faciendi, qui dixit, fecit, ſi malit ſubire periculum imminens, nam
in quacunque libertatis ſcintilla actus liberi arbitrii adhuc remanent, *Alciat.*
in l. 13. C. de tranſact. Hinc dicimus, quod coacta voluntas ſit voluntas, quæ in
medulla habeat aſſenſum, licet in ſuperficie diſſenſum oſtendat, *Bart. in d. l.*
2 [illegible] ff. quod met. cauſ. ubi gloſſ. adducit verſum tritum.

S. cq. volens fui tu, vel nollem velle coactus.

11 Cæterum in hac tormenti ſpecie examinabuntur ante alios † homines
molles, debiles, fœminæ, impuberes, pueri, puellæ. Mollities autē [illegible],
vel

vel ex corporis vel mentis imbecillitate & facilitate depromi poteſt, quam ex variis cauſarum figuris, is qui juriſdictioni præeſt, definere & arbitrari debet, res ardua eſt & multis erroribus obnoxia, deinde conſideranda & ponderanda ſunt indicia cauſæ, quæ niſi graviora ſunt & ex omni parte conſpicua & probata, ſatius judex factitârit, ſiquidem ſubſtiterit, donec ad accuratiorem & pleniorem pervenerit notitiam cauſæ indiciorum, indiciis non ſat ſuperque ſtringentib. non peccabit judex jungens & cōferens hęc examina rigoroſa indiciis, & fideliter explorans, utrū is ex contradictione reorum nonnihil ſolidi expiſcari poſſit, ad fundanda indicia eaq; corroboranda, cumprimis ubi delictum grave & exceptum eſt in quæſtione. Cæterum in delictis minoribus, quæ alias non admittunt quæſtionem vel pœnam capitis, ne delicta maneāt impunita, hiſce modis & ſpeciebus coërceri reus & ad confeſſionem urgeri. (1.) Si forſan majora fateretur reus (2.) & dum ſimulat judex tormenta graviora, eò facilius exprimat veritatem reo. Sæpe enim accidit, ut rei criminis minoris delati, ſub hac ſpecie detexerint horrenda & execranda flagitia, hinc dicimus: Tout vient à poinct, que pout attendre, diſtinguat vero hic judex inter meticuloſum & metu percuſſum, meticuloſitas eſt mentis vitium, qui ut plena rimarum in ſe ipſam utplurimum peccat, & ſæpe falſa pro veris venditat, quæ meticuloſitas ut maximè junctam imprudentiam & mentis imbecillitatem juxta ſeſe patitur, quò non obſcurè reſpicere videtur, *Ulpian. in l.1.ff.quod met. cauſ. Arniſ.cap.3.d.loc.nu.16.* qui oppoſuit metum & meticuloſitatem, de illo agit illud Terentianum vix ſum apud me, ita animus commotus eſt metu. *Et Martial.lib.2.ibi:*

Res eſt imperioſa timor.

Contra prudentem metu vi majoris percitum & commotum deſcribit, *Horat.3.Ode.3.*

Juſtum & tenacem propoſito Virum, quem,
Non civium ardor prava jubentium
Nec vultu inſtantis Tyranni,
Mente quatit ſolida.

Quantum homines concernit debiles corpore, de iis dicetur capite ſequenti. Mulieres terrore pridem ſuperandas, ratio antedicta exigit, quæ à mollitie nomen ſortiuntur, *Tiraquell.de ll. connub. l.1.gloſſ.1.n.56* quo elegio eos deſcripſit, *Homer.Iliad.8.* quam mollitiem jus Canonicum ad mentem magis, quam corpus reſtringit, *q.7.cap.32. gloſſ. cap.1 de ſponſal.* Communiter æquè, vel magis ad corpus quam animum ſpectare illam mollitiem tradit, *Lactant. 1.divin.Inſt. cap.16. unde Sil. Ital. lib.2.*

Parietibusq; domus imbellis fœmina ſervet,

Et Ovid. 2. Faſtor.

Quid faciat pugnet, vincetur fœmina pugnans.

12 Extat hac de re, *Plin. locus 11. natur. hiſt. cap. 49.* ubi ſcribit † mares in omni genere animalium fortiores eſſe ſexu fœmineo, exceptis phantheris & urſis lupis. *Ariſtot. lib. 4. de gener. animal. cap. 6.* accedit locus ſacer, *Deut. 28.* ubi tenera eſt quæ ſuper terram ingredi non valebat neq; pedis veſtigium figere
13 propter mollitiẽ, &c. Hinc vulgò dicimus, ut ſi quando † & viri & mulieres ejuſdem delicti reæ ſint una torquendæ, primo gradu torqueatur mulier utpote animo mollis & fragilis, cui citius & facilius exprimi veritas poſſit, hinc *Ovid. Metamorph. lib. 9.* nec candor in ore.

Permanet, & vires augentur & acrior ipſe eſt,
Vultus & incompti brevior menſura capillis.
Pluſq; vigoris adeſt, habuit quam fœmina. &c.

14 Quapropter mulieres † doloris impatientes & ad murmurandum faciles eſſe, *in l. quis, 6. ſi maribus, ff. de reb. dub. dicit JCtus. Alphonſ. Toſtat. in Jo-*
15 *ſuam tom. 1. & Deutron. num. 295.* idem adſerit & teſtatur † apud Græcos mulieres vendi potuiſſe proferro *Tiraquell. in ll. conn. pag.* [illegible] vulgata eſt deciſio ut ſiquidem ſuboriatur quæſtio, ecquis conjugum prior vel poſterior,
16 vixiſſe dicatur, vir † præſumatur diutius vixiſſe tanquam robuſtior, &c. proinde capite antecedenti induximus exempla mulierum ſub tormentis conſtantiorum longe maritis, quæ tamen exẽpla ut rara non poſſunt trahi in conſequentias, *l. 14. ff. de ll.* extat quoq; hac de re, *Conſt. Crim. Car. V. art. 144.* ibi: So wehre doch müglich daß ein grawſam Weib einen weichen Mann zu einer Nothwehr dringen möchte/ inſonderheit ſo ſie ſorglichere / vnd er ſchlechtere gewehr hette / *Franciſ. Poll. 2. hiſt. Roman. cap. 7. pag. 2*[illegible]*3.* ibi, fuerint quædam Androginæ quæ animo, ingenio, viribus, cæptis, annis viri eſſent nihilque muliebre retinerent, præter ſexus inſigne, ut contra viri quidam ita molles anguſto, fractoq; animo, ut cum nihil viri præter virile haberent, meritò hæc audiant:

O vere phrygiæ, neq; enim phryges.

Et illud Ennii:

Vos etiam juvenes animum geritis muliebrem
Itaq; virgo viri.

17 Cæterum impuberes † uti molles & fragiles corpore adhuc & judicio ſimiles ſunt fœminis reſpectivè de quibus modo ſermo fuit, qui ſimiliter torturæ haud facilè ulteriori ſubjugabuntur gradui, niſi indicia prægrandia & violenta corporis & animi vigor, malitia, nec non delicti atrocitas ſuadeant diverſum, cum par potentia cauſæ effectum producit ſimile & adæquatum, *Eberhard. in topic. in loc. a cauſ. ad effect.* de minoribus idem quoq; jus eſto, modo diſtinguatur utrum minor ſit pubertati proximus nec ne? Si pene pubes eſt, ut vere pubes torqueatur [illegible] modo dictus, ſin minor [illegible] ſuper ferula [illegible] per miniſtros publicos non [illegible]

nam

num carnificis, *vide Clar.d.quæſt.* 64. Sed hac de re capite ſequenti pluribus.
Quartus † gradus torturæ eſt ipſe actus torturæ corporalis, qui perfici po- 18
teſt modis variis pro diverſitate loci, & gravitate delicti commiſſi, Clar. in
hoc gradu conſtituit elevationem in eculeo, *quæſt.* 64.*num.* 34. ubi quæri ſo-
let de ſpacio † elevandi vel quouſque quæſtio durare debeat: Reſpondeo 19
repetenta hic eſſe priora, nempe ut diſtinguatur inter robuſtiores animo &
corpore, ac molles & tenuiores perſonas, illi uti cōmunis fert opinio ad ſpa-
cium momenti, quò bis tervè recitari poſſet numerus literarum a.b.c.d.vel
ut Farinacius & alii ſcribunt, quo Apoſtolicum ſymbolum, Pater noſter,
vel Ave Maria, ſemel bis tervè pro ſtatu & conditione perſonarum & atro-
citate criminis, nec non ponderoſitate indiciorum, quæ res in mero judicis
arbitrio ſita eſt, modo arbitrio non abutatur judex ſeque ſyndicatus reum ſta-
tuat, *vide Wier de præſt.dæmon.cap.*12.*lib.*5. ubi reprehendit & taxat judicem
ad mortem uſq; torquentem mulierculam hiſce verbis adſcribere volui, ad
terrorem judicum temerariorum & imprudentium, quorum † inſcitia ple- 20
runque ſolet eſſe innocentis calamitas ut ait, *Auguſtin. d. loc.* habet ſeſe ve-
rò hiſtoria † noſtra memoria Marcoduri, ubi hortorum olera ex grandine 21
diſſipata forent, illæſis proximi horti cujuſdam vetulæ plantis, qui ſæpius
eſſe ſolet tempeſtatum tractus, vetula maleficii accuſata in carcerem pertra-
hitur, & quum maxima tyrannide, diriſſimis ſubjecta torturis ad nullius cri-
minis confeſſionē compelli poſſet, ſed penes ſe non eſſe, tempeſtatem ciere
vel aerem conturbare, Deiq; ſolius id opus eſſe valde diceret prudenter,
eam per trabem ſuſpenſam & oneroſis ponderibus utrinque penſilibus di-
ſtractam, jamq; animam agentem relicturus in illis cruciamentis, præſes car-
nificem ut ſecum ſimul abiret potatum hortatur, vetulam ubi redirent, alia
falſuram inquiens. Tum illa miſerabiliter excarnificata, ut prius accerſere-
tur confeſſionarius, quam ille pocula ſequeretur, præſidem ſuppliciter orat,
qui irridens diſceſſit. Poſtea a. reverſus, eam ita adhuc ſuſpenſam offendit
mortuam, mentitus eam ſibi manus interea dum abeſſet intuliſſe. Nec mul-
to poſt tempore tyrannus hic in ejuſmodi incidit inſaniam, ut ipſe laceratis
veſtibus, & excrementis faciei ſuæ illinendis, vim ſibi faceret. Denique in
gradu quinto † collocant intenſionem funiculi, quo ſurſum elevantur rei 22
ad eculeum, quam quaſſationem appellitant vulgò, *Clar.d.quæſt.*64.*num.*36.
ut cum ictus dantur duo pluresve funiculo, quo ſuſpenditur reus, plura &
varia ut in antiquo ita hoc ſeculo recepta ſunt tormētorum genera, quę vel re-
miſſius vel durius applicantur, prout ſubjecta cauſa & ratio requirit, † ut- 23
plurimum autem ut olim ita nunc in occulto quæſtiones habentur, quorum
† inſtrumenta alias modo cataſtæ ligneæ erant, aptæ ad intendendum & re- 24
mittendum, quibus potiſſimum ſervos fugitivos eo delinquentes coërce-
bant, continebantq; porrò ad torquendos reos ut facti veritas eliceretur.

Deinde

Deinde inſtitutum tormenti genus erat familiare, ut quando cataſta huic brachia pedes ejus, qui torquendus erat nervis quibuſdam qui fidiculæ dicebantur cum cataſta intenta atque altum erecta, ut ex ea quaſi in cruce quadam reus diſtenderetur, in qua primum compagem ipſam oſſium reſolvebant, deinde conſtantibus ejuſdem corporis laminis admotis, atq; biſulcis ungulis ferrea latera habentibus doloris acerbitatem augebant, unde *Cic. 7. Philipp.* ibi: ponite ante oculos vincula, verbera, carnificem, &c. Et Svet. *in lib. 2 cap. 62.* excogitavêre ait inter genera cruciatus etiam, ut larga meri portione per fallaciam oneratum, repente feretris deligatis fidicularum ſimul urinaq; tormentis detinerent, *Dambud. in 1. cap. 2. cap. 17. nu. 17.* refert veteribus duo tormentorum genera præcipua fuiſſe, funis & ignis, *Dd in l. nullus, C. ad l. Jul. majeſt. Clar. quæſt. 64.* tres torturæ gradus ponit, *Farinac. de jud. & tort. l. 16. in 5. quæſt. 38.* ait ſæpe etiam carnifices aut ſtrigas facere aut reos diurius ligatos tenere ut defatigati neſcio quid confiteantur *Senec. lib. 22. Epiſt.* teſtatur antiquitus quoque uſitatum fuiſſe hoc, ut reis injiceretur pallium aut tunica alimentis ignium illita & intexta, quo alludere videtur Juvenalis ibi:

——— Tunicâ punire moleſta

Et Martialis.

Et cum dicatur tunica præſente moleſta
Ire malum, &c.

25 Quo tormenti † genere Chriſtianos tanquam maleficos & ſortilegos excruciatos fuiſſe, ſub Nerone teſtatur Sueton. in vita ejus. Inprimis autem hæc tormenti crudelitas in artis magiæ reos exercebatur, exiſtimabant enim omnium hoc graviſſimum tormentum ſive ſupplicium recte quadrare ad facinora atrociora inquirenda vel coërcenda *Phil Cam. 3. med hiſt. 1.* eodem tempore ſarmentorum uſus in torquendis vel puniendis reis communis erat, Gallis dictus petit feu, unde Chriſtiani ſarmenticii dici cœperunt, *Euſeb. lib. 4. Eccleſ. hiſt. cap. 14.* ſcilicet qui quam plurimum hoc tormenti genere excarnificabantur, *Roſat. lib. 8. antiq. Rom. cap. 13. & 21. unde Tertull. in Apologia quadam.* ibi: licet nunc nos ſarmentitios appelletis qui & ipſi dimidii alſis exuramur, hic tamen eſt habitus victoriæ noſtræ, tali curru triumphabimus milites Dei, qui nec in dolore deſerũtur, nec in morte timent. Inprimis verò immanis fuit illa Neronis feritas, qui Chriſtianos ferarum tergis contectos abs canibus dilaniari jubebat aut crucibus affigi vel flammis comburi, ſicuti Corn. Tacit. narrat. Sed poſt Trajanum eadem fuit ſævitia. Crucibus inquit Tertullianus in Apolog. & ſtipitibus imponitis Chriſtianos, unguibus deroditis latera Chriſtianorum, cervices ponimus, ad beſtias impellimur ignibus urimur, in metalla damnamur, &c.

Ad fidiculas redeo, quarum utplurimum faciunt mentionem Doctores hodierni, vulgari & trito loquendi uſu pro quovis tormento accipiuntur.

Fidicu-

Fidiculas ut *Zwing. d. loc. p.* 4312. *lib.* 3. *vol.* 28. accipiunt pro tormento, quo ab tortore ſontes funibus alligatis manibus à tergo torquentur, vulgo cujus certatim meminerũt, Seneca, Fabius, &c. quod † tormẽti genus uti apparet, quoq; 26 fuit vetuſtiſſimum, inter alia uſitatiora tormenta. modũ narrat, *Frun. de ind. & tort. p.* 6. *col.* 4. ut quando rei aqua cum calce calida mittitur in nares & os miſeri qui torquetur clauditur, quod tamen periculoſum eſſe idẽ aſſerit, cum facilè reus ſuffocati hinc poſſit. Alia adhuc genera & modos hic referam, non ut edoceam judicem crudelitatem, quod longè abſit, ſed ut pro re nata utatur iiſdem pro gravitate cauſæ vel conditione perſonæ torquendæ, quæ enim imbecilles ſunt corpore & animo leviori, quæ robuſtiores ſunt ſeveriori tortura ſunt affligendæ. Verba huc tranſcribam aliquot ex Marſilio, qui in manibus omnium non habetur, *in l. in criminibus, ff. de qq. num.* 27. Aliqui † 27 verò utuntur quodam taxillo ſatis magno, quem ponunt ipſi reo ſuper osse vulgariter dicto la baichia del pede, poſtea calcant ſuper eo cum ligno ſeu una ſtanghetta, & hoc tormentum vulgariter nuncupant la ſtanghetta. Quidam alii ponunt ſcarafacium ſuper umbilico rei denudato, ſpoliato ac ligato ſuper uno bancho cum corpore reſupinus. Super ipſo umbilico ſcarafacio ponunt unum ciatum vitrium, & ille ſcarafacius rodit umbilicum ex quo ipſe reus acriter torquetur. Alii torquent cum lingua caprina hoc modo, nam lavant pedes rei torquendi cum aqua benè ſalita ſeu ſalſa, poſtea ligant torquendum ſuper uno ſcamno pedibus exiſtentibus extra ſcamnum, faciunt poſtea, quod una capra cum lingua lambit pedes ipſius rei ſcil. plantas pedum, quod libenter facit ipſa capra propter guſtũ ſalis, & illud tormentum crudele reum & eſt ſine periculo, de hoc tormenti generi agit etiam, *Zwinger. in theatr. humanæ vitæ volum.* 28. *lib.* 3. *pag.* 4312. ibi: infandum tormenti genus eſſe ajunt, ſi plantæ pedum muria vel aqua ſalſa optimè perfricentur, admovetur capra, quæ ſalſo ſapore allecta, lingua aſpera incredibilem dolorem excitat, & riſu Sardonico deliquium homini inducit. Eo genere tormenti Draculam apud Tranſylvanos uſum tradit Bonfinius. Quidam alii torquent mittendo virgas ligneas inter digitos rei, poſtea cum una chordula ligant digitos & illos ſtringunt.

Quidam vero utuntur chordâ ligatis manibus poſt terga, quod tormentum magis eſt in uſu cæteris. Aliqui etiam dant reo torquendo comedere carnes bene ſalitas & poſtea denegant ei potum. Alii lavant pedes torquendi & poſtea cum lardo ungunt pedes & ponunt reum in compedibus, deinde faciunt magnũ ignem ante pedes ſuos & habent poſtea unam tabulã ligneam in medio inter pedes ſuos & ignẽ, qui volunt eum torquere elevant illam tabulam de medio, adeò quod patiatur maximum dolorem ex illo igne, qui volunt ſibi dare, inducias & quietem deponunt illam tabulam, *& iſta ſunt genera tormentorũ, quæ dant reis pin. d. frabru. in d. ſuo tract.* Sed ultra eum diſco,

I i pergit

pergit. *Marſil. dict. lo.* alia etiam ſunt tormenta, quibus judices [illegible] nam reus quoque expoliatur nudus, & accipitur una tabula lignea, [illegible] nitur ſuper aliqua re non plana, ſed [illegible], poſtea cum ſcina [illegible] tergo nudo, ponitur reus ſuper illa per tranſverſum, & magnum pondus [illegible] penditur illi ad collum & ad pedes, adeoque patitur [illegible] in tergo ſeu in ſcina. Aliqui etiam ligant teſticulos rei cum una corda, [illegible] cum una virgula percutiunt eos & hoc eſt acre tormentum. [illegible] reos habui in fortiis meis dum fui jus dicens, qui aut [illegible], aut conſtantia, aut fortitudine aliqua tormenta non timebant, [illegible] talibus reis duo genera tormentorum. Primum eſt, [illegible] debet & torqueri aliquantulum non tamen ſufficienter, [illegible] ra, & ſi non vult confiteri, quia non timet, ſeu non [illegible] tumque eſt calidus & in ſudore [illegible] proj ci magnam quantitatem aquæ ſuper capite & [illegible], & per [illegible] diſſolutum a chorda ſic quieſcere per horam, [illegible] cias iterum eum torqueri, & tum oſſa ejus [illegible] & tunc cruciabitur acrius in duplum quam [illegible] eſt terribile tormentum & de hoc feci experimentum in uno [illegible] degradato, qui fecerat falſam monetam in valle Zigari [illegible] batur presbyter de colla, &c. Aliud tormentum [illegible] obſtinatos & contra non timentes tormenta [illegible] tur, qui huic tormento poſſit reſiſtere [illegible] men eſt maximæ potentiæ, & antequam de ipſo [illegible]

[illegible]

[illegible] ea [illegible] erat hoc in loco, quæ altiſſimo ſomno ſe-
pulti & mortui [illegible] non poſſunt [illegible] tari, flammulis & pice ardenti in cor-
pus nudum [illegible] penè ex[illegible]. Sanè res ardua eſt quæſtio, nec certis li-
mitibus & cautelis [illegible]. Alius refert *Plin. lib.* 24. *cap.* 17. Quod
A[illegible]menidion planta [illegible] folio naſcitur in Tardaſt[illegible]s Indiæ,
cum radice in p[illegible] que pota in vino, noxii per cruciatus no-
ctu confitentur [illegible] imaginationes. Eandem hippo-
phob[illegible] appellat Pythagoras, [illegible] quæ præcipuè caveant eam.

Porrò hoc meminiſſe oportet, ne judex [illegible] exquirat modos torquen- 28
di inuſitatos [illegible] eptos in foro [illegible], quod ſi fecerit, procul dubio
litem ſuam facit, *Clar. d. quæſt.* [illegible] in ſe judicibus, ſiquidem
partes ſibi [illegible] carnificum [illegible]. Quid modus [illegible] ictus
funiculis manibus poſt [illegible] lignis [illegible], *ar*[illegible] *D.*
C. ad l. [illegible] mentem [illegible] Philippus Mari[illegible] Medio-
lanenſis, qui cum [illegible]
vicenq; tandem [illegible],
cum fidibus arctiſſimis [illegible]
te innocentem [illegible]
que ſententia [illegible]
[illegible]. D[illegible] e
[illegible] non poſſunt
propter [illegible] poſſunt
[illegible] ad [illegible] veſtis [illegible] tormenti genere [illegible]
quomodo D. [illegible] Tr[illegible] hoc [illegible]
relatum mihi eſt pro certo, præter [illegible] Germania noſtra rece-
pta plurima tormentorum genera [illegible]
[illegible] feciſſe [illegible] qui acerbi-
ore quæſtionis [illegible] fuiſſe tandem.

Neq; [illegible] 29
[illegible] usque [illegible] pricibus [illegible]
[illegible] *Maſc.* [illegible] 4 [illegible] *de* [illegible] pœnæ
[illegible] & non ad [illegible] 2
[illegible] 2 [illegible] & medicis [illegible]
[illegible] vel quoties [illegible]
[illegible] s
[illegible] tenendum eſſe [illegible]
die [illegible] vero [illegible] Et
Cr[illegible] *de* [illegible] Quod judices [illegible]
leges præ oculis habeant. [illegible] in [illegible]
ciorum urgentiorum [illegible]

10 tur eandem judex. Sed quid † ſi reus poſt quæſtionem [illegible] confeſſionem? Reſpondetur repetendam quæſtionem ſine novis indiciis [illegible] nientibus. (1.) Quia quotieſcunque quis cogi poteſt ad [illegible] non eſt locus revocationi vel pœnitentiæ, quam maximam adducit *Marſil.* [illegible]
31 *16.num.11.ff.de qq.* (2.) Qui cogi poteſt, † ut confiteatur, cogi [illegible] debet ut perſeveret & perſiſtat in confeſſione, hæc ſe invicem arguunt & [illegible] *Bald. in l.* [illegible] *Cod de probat. Franciſ Brun. de qq & tort.* [illegible] *ſed pone, &c.* (3.) Omnis variatio indicia parit, *part.1.* [illegible] *ap. Marſil.* [illegible] *re ff. de qq* Sed hæc revocatio variationem omnino involvit, *Marſil.* [illegible] *16.num.1.* Ergò. Ob nova indicia autem repeti poteſt quæſtio, [illegible] dicta, *argum. l. repeti 16 §.1.ff. eod.* neq; obſtat, quod unicum indicium [illegible] ducat quæſtionem, &c. Reſpond. indicia ante quæſtionem [illegible] adhuc ſtringere, quæ pro re nata juxta Bartoli opinionem *dict. lo.* [illegible] adhuc ferunt probationem, quibus cum variatione junctis, [illegible] de ulterioribus quæramus indiciis. At viciſſim reclamare videtur, *l. repeti 16 §.* [illegible] *ff. de qq.* quæ nova prorſus requirit indicia & ſeparata [illegible] diſtinguendum eſſe inter perferentem tormenta & nihil confitentem, & reum fatentem ſub quæſtione & dehinc revocantem confeſſionem ſub tortura factam, [illegible] de re in præſentiarum, de illa agit ſolummodo *l. 18. § 1. ff. de qq.* (4.) Conſequeretur immenſum abſurdum, cum enim liceret reis revocare confeſſionem, nec inde repeti quæſtio poſſet, omnes pene [illegible] nti & ſic furcæ ſtarent in viduitate, ut *Marſil.* [illegible] *num. 15.* Argumentum verò quod de abſurdo evitando inducitur [illegible] *bar. in* [illegible] *ab abſurd.* Si hinc omnis diſpoſitio [illegible] abſurdum ſequitur, *l. 2. Cod. de nox. act.* quod arguit [illegible] ceſſione [illegible] ait *Bald. in l. conventiculi, C. de Epiſc. & Cler.* [illegible] vero [illegible] noſtris idipſum, in quo neque ratio ſicq; [illegible] [illegible] eſt pervenire, [illegible] lipp. Maria Dux Mediolanenſ. nihilominus ad ſupplicium [illegible] reum, licet confeſſione ſub quæſtione [illegible] [illegible] mentionem [illegible] *pag.* [illegible] Refert *Marſil. in d. l. repeti, num.* [illegible] Mediolani [illegible] [illegible] ſe [illegible] ſepium [illegible] Reſpondit [illegible] Domine, melius eſt [illegible] ctus, quam ſemel in [illegible] nam tot reperiuntur [illegible] [illegible], qui ſciat [illegible] malo [illegible] quam [illegible] ſtle.

Cæterum quid † ſi reus ſub tortura ſecunda inficietur facinus, quod 32
quidem confeſſus erat ſub quæſtione prima, ut poſtmodum revocavit? Reſp. Si levis fuerit prima tortura, c[illegible] non facta ſit habenda, ſicque centendæ quæſtiones quaſi una rigoroſa ſolūmodo eſſet patrata, ut ſic in hoc paſſu ad terminos communes reus redeat, ubi autem & prima & ſecunda tortura fuit atrox & ſat dura, her[illegible]ro, dici quidem poteſt & repeti hic, quidquid de prima tortura ejusque remanentibus indiciis nec non de variatione, inducebatur, at cauſa modo alium ſortita eſt ſcopum, Marſil. decidit quidem hanc quæſtionem, nempe quid facturus ſit judex, reo poſt ſecundam quæſtionem pernegante vel revocante confeſſionem? dimittendum reum adſerit cum Paride de Puteo, ſub cautione præſtita, *in d.l.repeti, num.* 4. ego longe fortius illum exiſtimo abſolvendum, qui ſemel non bis ſalſus fuit cumen ille bis, qui toties recantavit. Cumprimis quod vero certius ſit, torturam tertiam non eſſe concedendam, niſi ex omni aſſe nova indicia ſubinerverint, eaque a primis indiciis, omninò ſeparatiſſima, *Marſil.d.loc.n.*16. Quæ enim de novo emergunt, novo indigent auxilio.

Trinâ † tandem commiſsâ tortura, ulteriori non detur locus, neq; 33
hic obſtat, quod repertis jam novis & ſeparatis indiciis cauſa videatur ad terminos juris communis redacta ſicque conſideranda res ſit, quaſi ante hac nunquam fuiſſet reus tortus: Reſpond. Speciale eſſe exorbitans indultum, quo reus tertia vice torquetur, quod ad regulas & conſequentias juris communis nequaquam reducendum [illegible] 14 *ff.de l.* [illegible] vulgata regula, quod exorbitantia ſint reſtringenda nec ad caſus ſimiles extendenda propter rationis identitatem, *Eberhard.in loc. a r.at leg.larg. num.*4[illegible] *& ſeqq.* Deinde infinitum in naturalibus non datur, & omnis infinitas quaſi abſurditas eſt vitanda, *Idem Eberh.in loc. à fine*, quorum verò iſta repetenda tortura, quæ non niſi ſcandalum & ſæviciam diabolicam præ ſe ferre videatur: Notatum verò hic eſto, repeti poſſe quæſtiones ſub uno quæſtionis actu bis, terve, ut ſi prima vice non confiteantur tormenta paſſi per ſpacium aliquod breve, altera vice denuo eleventur (vel ſi quavis alio modo urgeantur per quadrantem horæ, tertia vice ſimiliter per idem ſpacium vel etiam horam dimidiam, quoties indicia ſunt admodum urgentia, & reus homo ſit duræ cervicis, vel robuſtus & ferreus, validus & vegetus, at non quæſtionum actus per intervalla dierum repetendi ſint. Specia illa di[illegible] judex non tam ex perſonarum, quam rei ipſius differentia, [illegible] eſt conſiderabit qui paſſionæ ſint impatientes nimis torturæ ut loquitur, *Ulpian.in l.*1 §. 24. *ff.de qq.* ſit modo dixmus quanta ſit ipſa quæſtio ejusque vis & potentia, &c. quæ enim acerbior & durior quæſtio, ea brevior ſit, conſequentia dictat.

Tandem, ut finem aſſequamur † reo poſt tres ſeparatas torturas ſe- 34
cundum ante dicta (non ſpecia hæc torquendi reus ſubintelligatur) nihil con-

mente vel revocante priorem confeſſionem, [illegible] ma-
giſtratui, cujus cenſuram & pœnam [illegible],
uti capite antecedenti [illegible], quod
rigore examinati fuerint plures nocentiſſimi, qui tamen [illegible]
ſerent, ut non immerito Ulpian. ſcripſerit, [illegible]
l.1.§.23.ff.de qq. quæſtionem eſſe rem fragilem & periculoſam. [illegible]
35 deſunt exempla, [illegible] innocentes, [illegible]
mento perpeſſi [illegible] nihil de ſe neque [illegible]
confitentes, denique non exempla deſunt, [illegible] innocentes [illegible]
tortura [illegible] patiuntur, non ſine [illegible]
[illegible] De primo agit, *Fulgoſ. [illegible] cap. 4. [illegible]*
[illegible] lib. 5 pag. [illegible] Agathocles, [illegible] Sicilia
regnavit [illegible] Siculis [illegible] & [illegible]
quam [illegible] erant, [illegible]
accuſatus [illegible] explanatum [illegible]
[illegible] & [illegible] Agathocli [illegible]
judicio [illegible] *[illegible]* [illegible]
rum R[illegible], [illegible] ma[illegible] quem [illegible]
mento [illegible] mulier [illegible]
in rei flagitioſæ ac turpes [illegible], doluit Ageſilaus [illegible]
re turpi [illegible], quod [illegible] res honeſtas [illegible]
ſe Reipublicæ, Plutch. in Apophth. Laconicis.

Porro & ſupra Demoſthenis, Libertus [illegible]
teri valuit ad [illegible] pertinere [illegible]
[illegible]
[illegible] *[illegible]* [illegible]
[illegible] & Menalippus [illegible], quod [illegible]
[illegible]
[illegible]
[illegible] Sic Ale-
[illegible], cum plus [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] *Fulgoſ. [illegible]*
[illegible]
[illegible] cap. 8. [illegible] Anaxarchus, [illegible]

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illa [illegible] poſſet, quo minus amariſſimum eum [illegible] verberibus invic[illegible]que [illegible], a[illegible] amputationem linguæ [illegible], anti: Non erit (inquit) [illegible] adoleſcens, hæc quoque pars corporis mei tuæ ditionis pro[illegible]que dentibus abſciſſam, & commanducatam linguam, in os ejus ira patens expuit. Multorum autem aures illa lingua, & imprimis Alexandri Regis admiratione ſui attentas habuerat, dum terræ conditionem, ambitum maris, ſiderum motus, totius denique mundi naturam prudentiſſime & facundiſſime expromit. [illegible] tamen occidit glorioſius quam vixit, quia tam forti fine, illuſtrem profeſſioni actum comprobavit. Anaxarchi[illegible] non vitam modo [illegible], ſed mortem reddidit clariorem, *Idem & Sabellicus lib.* 5. c. 8

Par exemplum recitat & refert, *Fulg.* [illegible] *cap.* [illegible] P[illegible]netus Veronenſis, cum ab Ecclino, [illegible] a Romano oppido [illegible] V[illegible]ronæ ac Tarviſini Marchia Principe ([illegible] c[illegible]u nov[illegible] P[illegible]ris ætate ſua anteibat) Patavium ad [illegible] crudelitatis miniſtrum miſſus eſſet, diu promiſſis [illegible], deinde tormentis diſcruciatus, u[illegible] in tyrannum [illegible], quos ipſe inſontes [illegible] doloris magnitudine ad [illegible], quæ ipſe ſponte ſua nunquam [illegible] fuerat, in ipſius [illegible] linguam [illegible], atque haud multo poſt [illegible] defecit, quemadmodum ejus pater Thomaſinus, eadem de cauſa ante defecerat.

Cæterum perinde [illegible] & proceſſ[illegible] re[illegible] *Idem d. l. & Zwinger.* [illegible] Bar[illegible] Vicentinus ([illegible]) cum adverſis [illegible] accuſationibus quæ [illegible] premeretur & propterea [illegible] in cuſtodiam traditus eſſet, & [illegible] quæſtione habita torqueretur, cum [illegible] putaretur adduci poſſe, ut falſa fateretur, & ita perdi poſſet, [illegible] excuſavit, ne dolore vinci poſſe crederetur, deinde [illegible] linguam, ſanguineq; in ſe largius manante, Anaxarchum imitatus, periit. *Idem* Succedit hiſtoria *Valerii Maximi lib.* [illegible] *cap.* 8. ubi M. Anton. C[illegible] [illegible] incepti [illegible] agebatur, cujus [illegible] in quæſtione per[illegible] poſtulabant, quod [illegible] cum ad [illegible] iret, [illegible] m [illegible]. A[illegible] ſervis plurimis laceratis verberibus eculeoq; impoſitis, [illegible] omnem vim accuſatoris, cuſtodita [illegible] luce [illegible] *Valer. Max.* [illegible] 8

Porro [illegible] *Idem d. l.* Meuſon Plinci fratre [illegible] à Triumviris [illegible] [illegible] dicere [illegible] vitæ ponere & [illegible] A[illegible] ſervi [illegible] ſe[illegible] hen[illegible] [illegible] Domini [illegible] ipſe P[illegible]ncus [illegible] rum objecit, *Idem.* De [illegible] Qu[illegible]

Mitæ

Mimæ (ait) virtus patientiaque non minor quàm Epicharidis fuit, quæ quàm feliciorem exitum nacta est. Nam licet [illegible] ludis [illegible] ad id tempus enutrita, ab omni virtute atq; patientia longè videretur abeſſe debere, tamen à Timiſſio accuſata, quòd Pompeii Senatoris [illegible] rum adverſus Principem Caligulam conſcia eſſet, ignorare ſe [illegible] perdixit. Dum ad tormentorum locum duceretur, [illegible] erat, dum tranſiret, pedem pede ſuo calcans, innuit, ut bono animo eſſet, quòd eum nominatura non erat. Atq; inter tormenta in hac ſententia [illegible] ter perſiſtens, tandem, ut quæ per injuriam [illegible] cruciatus perpeſſa fuit, [illegible] multis ac lenienda mala quæ pertulerat, collatis muneribus, [illegible] Quid quod *[illegible]* [illegible] Quaeſitus de S. cruce Patavinus nobilis, Acciolino Tyranno [illegible] Monaſterio fratrum Alemanorum magiſter, ſuffectus erat [illegible] Veronenſi, inde ob ſuſpicionem ſummoto. Verum, ut ſunt tyranni [illegible] hic paulo poſt illi parte eculo ſuſpectus reddiderat, quaſi [illegible] Tyranni perniciem conjuraſſet, comprehenſus [illegible] q[illegible] tamiliæ torquetur, donec eculeo miſerabili ſupplicio [illegible]. Ex nimio enim pondere, quod pedibus all[illegible]tum fuerat, [illegible] gibus, ferunt mortuum brachiis avulſo reliquo corpore in [illegible] ſuſpenſa manſiſſe, *Born.Scard.lib.3.Hiſt.Pat.*

Sic *Mariſius teſte eodem d. loc.* cum a Neapolitano [illegible] forcipe conciderent (liberum enim hominem Domini ſui [illegible] traheretur que per urbem ad majus ſupplicium, nullis omninò ejulatibus [illegible] non vultum mutavit, non ſtatum corporis, quin cum pectus brachiaque ad nervos oſſaque [illegible] & concisa eſſent, [illegible] obtulit, ac ſi ſecum non ageretur. Omnia enim [illegible] animi obſtinatione ac pertinacia, *Pont lib.2.cap.7 de F[illegible].dom.*

Porro cum Hermolaus Donatus, Venetus Decemvir [illegible] [illegible] haberet, [illegible] tum, qui [illegible] [illegible] potestat, [illegible] amator Hermolaum [illegible] a [illegible] [illegible] Palatio domum regredientem [illegible] ato ejus lumine, uno vulnere occidit. Cum cædis [illegible] conje[illegible] ejus facti veritatem diſquirere decrevit Venetus Senatus. Itaq; cum [illegible] [illegible] Hermolaum atq; Jacobum Foſcarum [illegible] Franciſci Foſcari eo tempore Venetorum Ducis F[illegible] [illegible] nec [illegible] arbitratu Senatus, Jacobum [illegible] [illegible] ctorem fuiſſe in vincula conjectum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Denique Hie[illegible] Olgiatus Mediolanenſis ex quatuor unus, qui Galeacium Sfortiam Mediolanenſem Ducem occiderunt, captus, [illegible] in cu- ſtodia acerbè [illegible], ut [illegible] conſcios [illegible] ac vigeſimum annum [illegible] corpore virgini, quam viro ſimilior, [illegible] appellas, ac [illegible] inſiceret, clara voce intrepidoq; animo [illegible] commendans, nullum unquam [illegible] tormentis, ſoluta ora- tione carminibusq; [illegible]. Demum ad locum ubi [illegible] deductus, [illegible] Comites, qui præ ti- more exanimati [illegible], collocuti [illegible] oravit, ut à ſe prius in- choarent, ut [illegible] exemplo Comites [illegible]. [illegible] indùco [illegible] tenſos, [illegible] brachiis q; [illegible] pedes deligatos, cùm [illegible] bant præ- paratæ mortis ſpecies atque horror averteret, ipſe [illegible] voce [illegible] facinus ex[illegible] ſe [illegible] attendit. A ſummo [illegible] [illegible] verbis nec voce mutata [illegible] Deum [illegible] git, *[illegible]*.

[illegible] quod attinet exempla eorum, qui [illegible] patientia ſupe- [illegible] tormenta, [illegible] pertulerunt, ut [illegible] non [illegible] [illegible] Martyres in [illegible] ſupplicia [illegible] ſeque- [illegible] quæ de [illegible] *Zwinger d. loc.* ubi [illegible] V[illegible] l[illegible], quam [illegible] adulterii [illegible], dum torqueretur, conſtanter [illegible] quæ [illegible] ad- ultera [illegible] diceba[illegible] tormentorum impatiens [illegible] fallus eſt: atq; ob eam rem, [illegible] [illegible] plus quam ju- ſtitiæ erat, morte damnatis, prodigii [illegible] [illegible] lax, gladio percuſſus, caput ſemel ictus amiſit, [illegible] gladio percuſſa eſſet, non cæſim modo, verum etiam [illegible] ferrum retr[illegible] e, ac carne vel [illegible] [illegible] ictu, tunc pro mortua [illegible] ſepeliretur [illegible], viva inventa eſt, [illegible] [illegible] cùm demum juſtitiâ [illegible] ſoluta eſſet veritas inventa eſt. *Idem*. [illegible] exemplum refert *Ludov. Vives in lib. 18. in Auguſtin. de Civitate Dei, cap. [illegible]* *quem allegat Zwinger. d. loc. ibi*: Quum juſſi à Juliano Chriſtiani ſepulcrum [illegible] Babylæ [illegible] transferre [illegible], audiente Principe canerent, cujus eſt [illegible] Ægypti [illegible] Julianus duci eos [illegible] quentes [illegible] torqueri juſſit. Salutius ergo [illegible] Theodorum quendam juvenem arripuit. [illegible] tormentorum [illegible] alacri atq; hilari ab initio [illegible] ad horam undecimam [illegible] mumq; ſuaviſſime [illegible], quem pridie [illegible] Eccleſiæ. [illegible] Sa- luſtius vidit, reddi cuſtodiæ imperavit, & ipſe ad Principem [illegible]

pervenit, dehortans ne [illegible] Christianos [illegible], [illegible] Principi ignominiæ ac dedecoris plenum futurum. [illegible] ab incepto deſtitit. Theodorum Euſebius teſtificatur [illegible], quæſiſſetque an [illegible] doleret: Minime vero, inquit ille, [illegible] nibebat juvenis in alba veſte, qui ſubinde [illegible] & ſudorem ſudario candidiſſimo detergebat, ita ut gravius potius fuerit, quando illum detraheret.

In eandem ſententiam tranſit hiſtoria de Sivardo. [illegible] *Zwinger ex M. Saxone lib* 14. Magni æmulo, pulſum Magnum [illegible] ad priſtinum regni faſtigium [illegible], adverſus Haraldi filios. Hujus auſpiciis, cum tribus Haraldi filiis, [illegible] & Olleno, paternum regnum affectantibus, navali certamine dimicavit. In quo captus, in concionem hoſtili ſententia damnandus abſtrahitur. [illegible] autem ſacerdotum adhibito, qui [illegible] confeſſionem [illegible] adſtantibus modo, quo licuit, explicavit, [illegible] decretam pœnitentiæ nomine præbiturum, [illegible] non ſuppetente, [illegible] ad privatorum [illegible]. Magnusque [illegible] Rege, quem [illegible] mentiebatur, [illegible] memorabat [illegible] inter perferenda ſupplicia non deſivit. Primò ſiquidem [illegible], ac deinde malleorum ictibus artuum [illegible], non gemitum, non [illegible] edidit, [illegible] ſed quaſi in otio [illegible] ſpiritum [illegible]. [illegible] vivum [illegible], [illegible] exempla prophana [illegible] ſufficientem [illegible] colophonem, eorum [illegible] M. Atilio, quem refert Silius Italicus Poeta egregius [illegible]

[illegible] chalybs, non [illegible]
[illegible]
[illegible] penitùs [illegible]
[illegible] in medio [illegible]
Ceſſa[illegible]
[illegible] tormenta [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

Sed ad [illegible]

[illegible]

deli[illegible] meta torturæ, poſteà vero revocet confeſſionem, quid hic facto opus? Diſtinguendum [illegible] judicialem & extra judicialem confeſſionem, qui reus enim in judicio [illegible] indiciis generalibus confeſſus eſt, merito condemnabitur, cum in confeſſum nullæ aliæ ſint partes judicium, niſi in condemnando [illegible] quid juſtitia requirit, exequi [illegible] *l. qui ſententiam, C. de p[illegible] ſi conf[illegible] & exhib. reor.* non pauci hic deſiderant [illegible] tortura urgere reum, ut perſiſtat in confeſſione, quæ ſententia [illegible] communiter eſt exploſa per rationem [illegible] poſſit in [illegible], qua de [illegible] *cap.* [illegible]. Cæterum ſin [illegible] reus eſt confeſſus, res eſt expedita [illegible] *part.* [illegible] *cap. 5.* [illegible] *judicium,* quæ juris maxima [illegible] hoc in loco [illegible].

Alias dicimus in brocardico [illegible] Quod quando judex probationes maleficii plenarias receperit, [illegible] vel [illegible] confeſſionem reorum [illegible] uſurpare [illegible] condemnare [illegible], *Bald. in c. ad noſtram. de prob. at.* [illegible] *de* [illegible] *etſi certus, ff. ad Syllan.* ſtatuit quod judex [illegible] probationibus integris [illegible] & [illegible] in [illegible] diſſentit [illegible] *de* [illegible] ſententiam [illegible] cenſet non approbat, *M.* [illegible] *nus. 5.* [illegible] quid ſi ſit plenæ probationi [illegible] dera ur, [illegible] reus? [illegible] demnari poſſe [illegible] *le. ff. quod met.* [illegible] *§.* [illegible] *fendor. M.* [illegible] *num. 14. cum* [illegible] *ibidem* [illegible] & hoc [illegible] teſtes de crimine deponentes [illegible] omni exceptione majores, reus quoq. plecti [illegible] extraordinaria [illegible] *C. de Epiſcop. audient.* [illegible] quæ hic obſtat [illegible] *qui adulteri, Cod. de adult.* Reſpondeo quod in cauſa adulterii ita ſingulariter ſit receptum, ut ex præſumptione legis [illegible] reus, quia adulter recta vel directa probatione convinci nequit, niſi ex indiciis [illegible], ubi vero delicta [illegible] & [illegible] probationem, [illegible] habet, *M.* [illegible] *l. repet. num. 24.* [illegible] *q. 99.* at jus ſingulare [illegible] non admittit, ad conſequentias non eſt trahendum, *l. 14. ff. de ll.* Ergo, &c.

46. Mulier prægnans cur torqueri non debeat? [illegible]

47. Mulier prægnans ſummari non debet, priuſquam partum exclu [illegible]

48. Lepro [illegible] *torquendi?*

49. Lepro [illegible]

NOn delati † vel accuſati omnes torquebuntur, quocirca jam de [illegible] ſtrandum eſt, qui rei torqueri poſſint nec ne, recenſebimus autem perſonas, quæ vel reſpectu dignitatis, ætatis, imbecillitatis animi vel corporis torqueri jure non debeant, ex inde patebit quæ demum perſonæ quæſtioni ſint ſubjugandæ. Cognita enim [illegible] in parte una, procul dubio pars altera cognoſcetur [illegible], & ſine ſolida & [illegible] demonſtratione, *argum. §.1. Inſt. de his qui ſunt ſui vel alien. jur. Eb* [illegible] *in loc a contr.*

1. Ratione dignitatis torqueri prohibentur viri Clariſſimi, quales † 2 olim erant Principes, uti & hodie Prætores, Conſules, Romani, Conſiliarii, Comites, Tribuni, *l. 2. C. de dignit.* [illegible] *ubi* [illegible] *in expoſit. Clar. quæſt. 64. in pr. crim. num. 10. Gandin. de qq. & torment. n.* [illegible] *quæ prærogativa* [illegible] † filios & nepotes eorum complectitur [illegible] hereditaria & transferuntur ad poſteritates. [illegible] allegat aliquot ll. ad hanc rem, ſed male & falſo [illegible] autem [illegible] eſt & [illegible] obſcura, quia ſurrogatum ſapit naturam ſurrogati, *l. 1.* [illegible] *ubi* [illegible] *eleganter §. ſi quis* [illegible] *l. unic. § 1. C. de rei uxor.* [illegible] *ubi Bald. & Dd. l. unic. C. de colleg.* [illegible] Regi ſuccedens Rex, Comes Comiti &c. [illegible] omniaque [illegible] jura & indulta, quæ antecesſor uſurpabat, *Eberhard.* [illegible] Eximuntur tamen ab hac regula † [illegible] & læſæ majeſtatis rei, *Gandin.* 3 *d. loc. n. 9.* Cum certo certius ſit, quod ubi & quocunque in capite pœna conſular ibi etiam locum habeat quæſtio, hæc enim ſe invicem [illegible] ex præcedenti deduximus. Sed Princeps, Comes Imperii læſæ majeſtatis tenentur, quoties in caput Angelorum conſpiraverint, *Gandin. d. loc.* [illegible] *de part. 2. cap.* [illegible] *& 4.* Ergo. Res ardua & periculoſa [illegible] eſt, ecquis ſtipatum [illegible] capiet, ecquis ſine degradatione [illegible] tradat in manus [illegible] in [illegible] Nec movet, quod [illegible] pare [illegible] Principibus, *l. de* [illegible] *Conrad.* [illegible] *de* [illegible] *jur.* [illegible] *nu. 16.* [illegible] *ibidem* [illegible] *Dn.* [illegible] *qui* [illegible] *nimius eſt,* [illegible] *C.* [illegible] quibus [illegible] honoris [illegible] occulto [illegible] ſpicionem falſi, *text. l. 21. C. de falſ.* [illegible] natus [illegible] reſeposito [illegible] Unde dicendum videbatur, [illegible] falſi crimen [illegible] ait *Cyn.* [illegible] *2. col. 3. C. de falſ.* ergo [illegible]

 & quod

& quod minus re[illegible] dicend[illegible], læſæ majeſtatis crimen[illegible]. [illegible] minus inelle vi[illegible], [illegible] *ubi gloſſ. C. qui ætat. lib.* [illegible] *C. de* [illegible] *cumulus, [illegible] de elect.* quod [illegible] argum[illegible] non[illegible] [illegible]
6 bile ſed neceſſarium eſt [illegible] s, qua [illegible], ut dicit *Eberhard. in top. in loc. a min.* [illegible] 4. [illegible] in prohibitivis de[illegible] pœnis eorum. Reſpondeo [illegible] talogo clariſſim[illegible], [illegible] extare decuriones, qui [illegible] comparantur, de quibus [illegible] ſuo loco [illegible] *de decur.* [illegible] *eodem.* 2 non tam gravis ſubſt[illegible] quoad [illegible] ſecutiones [illegible] [illegible] Principum, quales [illegible] [illegible],
7 neque [illegible] facto abjectus [illegible], turpius dictu. Si [illegible] Imperii [illegible] murere & notare quæſtionis [illegible] Ducem, Comitem, proditorem & læſæ majeſtatis [illegible] ctum probat[illegible] ibus, ultimo affic[illegible] re ſupplicio, vel [illegible] natia [illegible] lectere & coercere, alia juris ratio dictitat, qu[illegible] [illegible] de [illegible] tum.

2. Ratione dignitat[illegible] torqueri [illegible], qui & pe[illegible] *l. 1. ff. de q.* in Prætecto [illegible] Comites Africæ, magi[illegible] præfect[illegible] *l. 2* [illegible] *fer.* in quorum loco hodie ſubintrarunt [illegible] Comites, [illegible] *de Lancel. in templ. om. iud. cap.* [illegible] 3 [illegible] *cla.* [illegible] 4 *cap.* [illegible] *num.* 11. adeò ut mutata Imper[illegible] fic[illegible] is, iis qu[illegible] in dignitates hereditarias tr[illegible] r[illegible] & qualitet viri eminentiſſimi [illegible] mis, quos modo illuſtriſſimos vel illuſtres [illegible] & capitibus aliquorant[illegible], *Lancel. in templum* [illegible] [illegible] pares ſunt iſt[illegible] dignitate, præ[illegible] [illegible] *Eberhard. in* [illegible] *num.* 1. N[illegible] [illegible]

[illegible]

[illegible]

perfi, Comes † quippe ut obiter hoc ſaltem referam à comitando & ſe- [illegible] quendo nomen habet, l. [illegible] de injur. [illegible] bar Pet. de Ravenn. [illegible] Hottoman. & Da[illegible] tit. [illegible] feudor. [illegible] qui dicatur Dux, Marchio, Comes, Schonborn [illegible] de [illegible] jure ff Comites dicuntur [illegible] Pro-Conſules & Præſides in provincias miſſos ſequebatur & comitabantur, l. 16. de off. præſid. l. [illegible] de offic. aſſeſſ. [illegible] locat. l. [illegible] §. ſi quos, ff de pœn. Erneſt. Cothman. in lib. 1. C. tit. de [illegible] 36. Et hi pro adminiſtrationum ſibi commiſſarum varietate varia habuerunt nomina, utputa Comites ſacrarum largitionum, tot. tit. [illegible] offic. comit. ſacrar. largit. Comites rerum privatarum, tot. tit. [illegible] rerum privat. Comites Sacri Palatii, tot. tit. C. de offic. comit. ſacr. palat. cum ſimilibus, non dicuntur tales, nam qui effectu & officio carent, carent etiam reipsâ neceſſe eſt, [illegible] imperiali [illegible] cap. forum. de V. S. Principes † ſiquidem injuſti viri dicuntur larvati & inſtar [illegible] 10
ci paleis repleti, in figura hominis, Pari de Puteo in tract. Syndic. pag. mihi 25. imo ſtatuæ & ſtipites magis quam [illegible] Auguſtin. lib. 2. de lib. arbit. cap. 25. hinc illud Dux [illegible] Jacob. [illegible] de Put. d. [illegible] pag. 19. Quin quando Clerici [illegible] Stow. in Henr. [illegible] Cler. cap. 3 pag. [illegible] Ergo & Duces & Comites, quia Epiſcopi, † [illegible] Ducum certè 11
Comitum ſimilitudinem gerunt uti ait, Lancelot. in tr. quem inſcribit templum omn. jud. [illegible] lib. [illegible] cap. [illegible].

§. Regulariter quoque torqueri non debent Clerici, et inprimis Ar- 12
chiepiſcopi, Epiſcopi, Prælati, Abbates, Canonici, [illegible] nem. de R. [illegible] lob. [illegible] C. num. 8. [illegible] de Archiepiſcopis & Epiſcopis major dubitandi ratio eſt propter dignitatem Eccleſiaſticam, qua coruſcant, quanquam eis non indulgeant nec eximerint [illegible] quandocunque infamia acri & indiciis indubitatis [illegible] fuerunt, adeo ut reſpectu complicum & præcavendi majoris vis & tumultus [illegible] de locis & quibuſcunque rebus aliis ad ſtatum Regni vel Imperii ſpectantibus examinari eos oportuit. Sic Henricus IV. Walcherum Baldoken quæſtioni ſubjecit nec non Priorem Land[illegible] quod conſcius con[illegible] eſſet con- [illegible] Holiasb. in Henr. IV. Sic Archiepiſcopus Eboracenſis eadem [illegible] Walſingham in eadem Henr. IV. quem refert, [illegible] IIX cum adhuc ſequeretur partes Papæ Vicarium Epiſcopi [illegible] cum ſuis [illegible] ibus dari juſſit ad torturam, Stow. in Henr. [illegible] pag. [illegible] 13
Clerici inferiorum ordinum [illegible] pro [illegible] queri poſſunt, Bart. [illegible] Bald. [illegible] univerſitatis, n. 2 [illegible] Pari. de Put. in tract. Syndic. pag. 4[illegible]4. quod videat [illegible] Clericos [illegible]

n a[illegible]

majeſtatis & ſepulchri violati [illegible] velut [illegible] *vide ſummam* [illegible]

[illegible]

Hæc [illegible]

[illegible]

Cinerulus & Hannibal Bentivolus fuêre ambo ſanguinarii, ambo patratis cædibus inſignes, qui licet ſimul compatratus, quem vocant, ſacramento [illegible] melioresfuerunt. Nam Hannibal levato de ſacro fonte Baptiſtæ filio, [illegible] puerperam, compatrem ſequitur, eique manu prenſo pro [illegible], interim ab irruentibus ex improviſo Baptiſtæ latere [illegible], [illegible] manifeſto apparet [illegible] primi ſacramentum non tam [illegible], quam cædis patrandæ [illegible] Baptiſta quæſitam fuiſſe. Sed non [illegible] Hannibalis fuit. Nam qui partes ejus ſequebantur [illegible] obtinuere, Baptiſtam [illegible] cum pleriſq; ſuis complicibus [illegible] pluribus vulneribus confoſſum, [illegible] habitum, complerique more ferarum cor ejus dentibus [illegible] que bibere non horruiſſent eandem [illegible], [illegible] cap. 9[illegible]. *Michael Piccard. d. a.* [illegible] notiſſima eſt Monachi ordinis Dominici, [illegible] Monte Politiano, SS. Euchariſtiæ prophanatio & Henrici IIX. Imperatoris intoxicatio, cui ille ſub [illegible] venenum [illegible] in calicem mortis. *Franciſc. Hottoman. 2 feudor. tit. 6[illegible] pag. 57[illegible]*. [illegible] Henrico Septimo, [illegible] *Feudalis* [illegible] ad [illegible] Nauclerus [illegible] hoc falſi [illegible] ordini Dominicanorum, [illegible] paſſim omnes autores, quod [illegible] ſit veriſſima. *Johan. Pet. [illegible]* [illegible] patria [illegible] de Senas, & [illegible] receptus a Guelphis. Plures verò Dominicanus ab [illegible] in Thuſcia, Lombardia & aliis locis cum [illegible] periiſſe. [illegible] parceant Cæſari, qui Papæ non pepercerunt, etenim [illegible] eodem modo † Victorem III. [illegible] veneno in calice [illegible] primum fuiſſe [illegible] quodam [illegible] 10. *[illegible] Contr. Cariſlan. [illegible] Platina & aliis, &c. vid. Piccard. d. lo. [illegible]. vide Hottom. [illegible] conſider. at. [illegible] geſtor. pag. [illegible]4. ubi de puniſione aliquot Clericorum narrat memorabilia.*

4 Cæterùm licet dignitatis [illegible] † [illegible] promotus Doctor [illegible] *Cod. [illegible] l. 3. [illegible] de decur. [illegible] de P[illegible] pag. 25[illegible] Car. in pr[illegible] crim. pag. 14[illegible] Bre[illegible] de [illegible] pag. 8[illegible] de [illegible] num. 7[illegible] & ſeqq. Clar. in p[illegible] quæſt. 64. num. [illegible] & ſeqq.* pern[illegible] receptum eſt, [illegible] læſæ majeſtatis proditionis & perduellionis [illegible], *Clar. d. [illegible]* Animadvertendum verò hoc in loco eſt, [illegible] † [illegible] intelligi, quemvis [illegible] militarem, prædonem, nebulonem [illegible], [illegible] paſſim conſcribuntur copiæ militares, [illegible]

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præclari, ut exercituum Duces, Capitanei, &c. cum privilegia [illegible] dum antiquitus indifferenter tributa fuerint [illegible] *nu.2[illegible] ibi* ſecus autem in militibus privatis, nam illi quotidie [illegible] in hoc nullus dubitat, *Boſſ. in tit. de indic. & conſider* [illegible] *num.104.* [illegible] *97* ueque refert, quod milites privati [illegible] tati privilegiis *princ [illegible] de milit. teſtam. ubi* [illegible] inde enim a [illegible] rem inferri non debet, ratione ſcilicet [illegible] quæ erat nimia in militibus illis privatis [illegible] tia, quia milites arma non jura profiteri ſolent, &c. [illegible] pœnis non excuſat, quanquam facti ignorantia [illegible] *l.1.§ Divus,* [illegible] *L. Cornel de Sicar. l.* [illegible] *raque.* [illegible] *de pœn. cauſ.* [illegible] Proinde miles κατ [illegible]

13 cōs nobiles, qui † hoc [illegible] guuntur, *Boſſ. d. loc. Clar. d.* [illegible] ubi decidit & dicit [illegible] torquendo, hodie comperantur quidem militibus, [illegible] quites. *Boſſ. d.* [illegible] *num.104.* ibi: non ſequitur [illegible] poris, qui ſe exercent in armis & modo [illegible] hac [illegible] [illegible] qui hi quites non [illegible] cum more loquendi. Non enim creantur [illegible] quam conſuetudinem, nec [illegible] dum novam [illegible] in [illegible] antiquam creandi milites, de quibus loquitur [illegible] vulgo appellantur equites, non [illegible] [illegible] *C. de* [illegible] [illegible] Caſar quia hos equites [illegible] dici [illegible] [illegible] appellamus [illegible] milites.

[illegible] quod [illegible]

19 [illegible] C. M declaravit [illegible]

[illegible]

In tantum ut in Gallia publicè decretum fuerit aliquando in ſuprema Curia, ne deinde allegarent advocati privilegia de nõ torquendo [illegible], *Rebuff. dict. loc.* Idem in Italia [illegible] eſt, *Fr. Caſon. in tr. [illegible]* 2.1[illegible] *num.* [illegible] hodie neque per [illegible] Venetos & per totam Italiam privilegia de non torquendis [illegible] non obſervantur, & *[illegible] gid. [illegible] de [illegible] num.* [illegible] tradit, quod nec eam [illegible] allegare cum effectu poſſint privilegia ne torqueantur in tantum, ut [illegible] ſtatuant non poſſe introduci contrarium [illegible] per [illegible], quod non poſſit introduci conſuetudo contra legem, [illegible], *Authent. [illegible] & [illegible]. C. de ſacroſanct. Eccleſ. & Authent. Novi [illegible] de fur. [illegible] tit. [illegible] de conſuetud. in* [illegible] Reichs Abſchied zu Augſpurg [illegible]. Nach dem [illegible] Orten *Schrad. tr. de feud part. 5. partis [illegible] principal ſ. [illegible] num. [illegible] & ſeq. & part. 1[illegible] n. 1[illegible]. & ſeqq.*

Cæterum an conſuetudine † [illegible] introduci poſſit, ut Doctor [illegible] accuſatus vel delatus torqueri queat, non obſtante dignitatis privilegio [illegible] affirmat *Gandin. de malef. [illegible] de [illegible] n. [illegible] Jacob. de Be[illegible] in [illegible] rubric. de qq. num.* [illegible] *Guido de Suza[illegible] in tr. de [illegible] tort. num.* [illegible] *[illegible] dic. pag. 82. [illegible] ubi plures [illegible] pro h[illegible] ſententia adducit.* [illegible] tandem allegat *[illegible] in l. [illegible] C. de [illegible]* cum qua [illegible] *Cær [illegible] [illegible] 4. num.* [illegible] conſuetudo de [illegible] & [illegible] teneatur, *Cær. [illegible] [illegible] num.* [illegible] tandem hanc ſententiam [illegible] [illegible] Quæro [illegible] ret de [illegible] [illegible] eret & eſſet [illegible] & dico [illegible] inſequi, ut [illegible] conſuetudine introduci poteſt, ut torqueantur [illegible] jure communi torquebuntur, per [illegible] illam [illegible] S[illegible] id de quo magis videtur [illegible] non [illegible], nec etiam [illegible] *Eberhard. in t. p[illegible] lo[illegible] a m[illegible] r. num.* [illegible] Sed [illegible] dicendum eſt, quod hoc 21 in parte deteriore ſint nobiles genere, ipſis Doctoribus [illegible] decernendi quidem a D[illegible] non exprimitur, videtur [illegible] poſitam eſſe, cum jura plus faveant [illegible] qui [illegible] mu[illegible]. Quapropter *[illegible] de qq [illegible] 1.* [illegible] obſervari [illegible] non torquendos eſſe nobiles, [illegible] Reipublicæ, prout [illegible] & officia publica & præclare geſta, [illegible] enumero [illegible], *[illegible] di [illegible].* Accedit, quod de obilitas [illegible] nobilitate [illegible] poſſit conſiderari, qu[illegible] & [illegible], *P[illegible] [illegible] de nobilitate [illegible] ſcripta [illegible] ardo Cemano, & vide Caſan. in tr. [illegible] munni [illegible]*

Ut non [illegible] Dalmaticæ & Aſiaticæ [illegible] [illegible] 22 [illegible] nobilitatem agnoſcant, uti Germani nova & Neapolitani [illegible]

Galli & aliæ nationes, nobilitatem ex deſidioſa & luxu quaſi diffluenti [illegible] ex abundantia & rebus opimis, modo majores quoque non [illegible] runt genio, nobilitatem veram æſtimant, *Pogg. Florent* [illegible]

2 Si proſapiam † reſpexeris vix eſt ut certò demonſtrare paucis ex [illegible] eorum, qui annales citare vel producere poſſit, quo virtutis gradu [illegible] [illegible] pridem fuerit prognatum, an empta ſit nobilitas, uti in Gallia [illegible] [illegible] nobilitas emitur, *Guilhelm. Bude ad pand.* [illegible] *de part.* [illegible] *num.* 25. an data ob artem, ſcientiam rei [illegible] [illegible] & [illegible], gratiam, benevolentiamque meram & nudam [illegible] *pag.* 16. ego hominem relicta mercandi cura, cum [illegible] emiſſet, atque in ea cum familia urbe poſthabita ſe contuliſſet [illegible] [illegible] filius extitiſſe, & ipſum haud rejectum a nobilium [illegible] cos quicunque ad Imperatoris aulam vocati ſervitio ejus [illegible] abjecti generis ob Principis conſuetudinem ac familiaritatem [illegible] pellãturq. deinceps nobiles. Apud noſtros verò [illegible] Pontifex, Imperator, Reges, Principes, privilegio & literis [illegible] illi, quod riſu dignum eſt, [illegible] & [illegible] ſcriptura & [illegible] adipiſcuntur. Si demum [illegible] natales, [illegible] nobilitas [illegible] & vulgo [illegible] argumentum [illegible] bile eſt, nam ut *Clar. d. quæſt.* 16. *num.* 21. conqueritur, [illegible] propter [illegible] & alia nobilitatem [illegible] [illegible] ut [illegible] cubi [illegible] rationem [illegible] Clar. [illegible] nobiles [illegible] torquentes [illegible] eſſe [illegible]. Sed [illegible]

22 3. [illegible] non [illegible] ſpi- ci & pueriles *l.* [illegible] *§.* 7. *ff. ad SC.* [illegible] quænam ætas, quanta [illegible] tenectus, quam [illegible] & corporis [illegible] Apud Homerum † [illegible] Neſtor [illegible] [illegible] pellens [illegible]

V ix alii pollens [illegible]

Plerum[illegible]

[illegible] exemplum pr[illegible]

[illegible] *pag.* 18. *ibi.* [illegible]

[illegible]

ram. Hamet [illegible] reſpondit ſe ſemper pœnas ab irriſoribus exigere ſolitum, nec unquã impunè ſibi à procacibus inſultatum, *Sax. Gram.* quem refert *Zwing.* d. [illegible] & à regulis juris communis exemta. Siquidem tamen [illegible] & inſolita ſenioris fortitudo, [illegible] prudens ultrò [illegible] quæſtionem contra ſeniores, qui regulariter & corporis & animi viribus deſtitui ſolent eſſe debiles & infirmi, unde ſenex apud *Plautum* [illegible] *act. 5. ſcen. 2. de ſeipſo ſic ait.*

Conſitus ſum ſenectute, onuſtum gero
Corpus vires reliquêre, ut ætas mala eſt merx, mala eſt ergo
Nam res plurimas [illegible] advenit, adfert quaſi antumem.
Omnes nimis longus ſermo eſt, &c.

Quamobrem *Accurſ. in l. ſenibus C. de donat.* Senes debiles dicit corpore & animo & *Archid. in c. tanta, d.* [illegible] Senes † ſic dictos eſſe refert, quia [illegible] ipſos neſciant, quæ animi imbecillitas [illegible] hic conſideratur [illegible] corporis, cum enim fatui vel [illegible] cap. iq [illegible] non [illegible] quæ de re p. *ut. 1. cap. 27.* [illegible] pueris [illegible] ô furioſis non nunquã & reſpectivè regulariter [illegible] *Plato in lib. de l.* Si quis, [illegible] eorum, quæ aut ſacrilegi & legum corruptores [illegible] ob inſaniam vel morbo vel ſenio preſſus vel in ætate pueriii conſtitutus, [illegible] nihil differat [illegible] ſimplex omnino reſtituat, cætera [illegible] ibi 17

[illegible] mentis [illegible] etas
Præberet [illegible] lingua
[illegible] a Danubius [illegible]

De Timanthe Cleonæo athleta [illegible] cum non poſſet complicare, quem [illegible] ceciderit & propterea [illegible] refert *Zwinger. in theat. human. vitæ vol. 2.* [illegible] *pag.* [illegible]

Porro pueris vulgariter aſſimilantur ſenes, [illegible] bis pueri, [illegible] quod ſicut pueri qu [illegible] ferulæ, & [illegible] nunquam per oſtenſionem inſtrum [illegible] tormentorum [illegible] ſupra [illegible]. Sic etiam ſenes † tra [illegible] 18 [illegible] minis, verbis durioribus & [illegible] tamen inolevit, quod in [illegible] quo [illegible] decrepitæ ætatis, quæſtioni ſubjiciuntur, [illegible] quæſtione ſenem, *Brun. d. loc. pag. 53. D. l. in l.* [illegible] *§.* [illegible] tamen [illegible] reperint delicto agi, [illegible] & [illegible] tractãtæ itaque neo judicio ad [illegible] opiam mentis ſimiles facti ſunt, [illegible]

 [illegible]

29 *in loc. a pari*, extat hac de re † Regula Benedicti c. 37 [illegible] ram quodammodo trahi ad miſericordiam [illegible], &c. cui congruit [illegible] *Virgil.* 12 *Æneid.*

——— *Dauni miſerere ſenectæ &c.*

Unde *Ariſtot. in polit.* infert, quod poſt annos duodequinquaginta [illegible] vigor evaneſcat, & alibi *in polit.* ſenectutem mentis eſſe periodum ac corporis debilitatem, &c.

30 6 Pari ratione minores † 14. annor. quæſtione [illegible] deberet [illegible] *ubi* [illegible] *ff. de q.* [illegible] *4. ff. ad SCtum Sylan.* quinimodo [illegible] loco [illegible] debeat [illegible] & verbis atrocioribus [illegible] ferulis [illegible] cædi, *Clar. d. quæſt.* [illegible] quoad pueros, *l.* [illegible] *impuberes ff. ad SCtum* [illegible] *C. eod. Bart. in l. ex libero, §. ex minore, ff. de q.* [illegible] *tort. n.* [illegible] *p. mihi* 84. Sic Achilles Chironis ferulas ſubiiſſe [illegible], fecit *Zwinger. in d. theatr. lib. 1. vol. 1. pag. 81* *qua de re* [illegible] *1. Faſtor.*

Phillyrides puerum cythara perfeciſſe Achillem
At[illegible]
Qui toties [illegible] *perterruit* [illegible]
Crederet annoſum, [illegible]
Quos Hector [illegible] *erat,* [illegible]
[illegible] *præbuit* [illegible]

Quod ſi vero [illegible] proximi fuerint vel [illegible] pœna ordinaria [illegible] dubium non eſt, [illegible] rigoroſa & ordinaria [illegible] bertas minorennitatem, dolus impendens [illegible]

31 *SCtum Sylan.* Dolus † quippe [illegible] eſt & [illegible] nihil ſupereſt quod [illegible]

[illegible]

32 [illegible] † [illegible]

[illegible]

[illegible]

tales & laminam auream propoſuiſſent puero, is iterum ad aurum inclinavit, ideoque plexus eſt tanquam ſacrilegus, neq; ætati veniam dederunt, ſed flagitium & ſcelus vindicarunt. Cæterùm quoad indicia & quæſtiones puero vel minori [illegible] ſ[illegible]ndas, *vide cap. 2?. part. 1.* cumprimis reſpicienda & examinanda mens minoris erga Parentes, Præceptores, Seniores, quorum ſi nulla reverentia [illegible] ſpem [illegible] de ſalute ejus frugi nihil eſt, quod ſperemus, quæ & alia argumenta non parum fidei vel roboris præbent quæſtioni contra minorem formandæ, quâ de re partim Martialis extat elogium Satyra 41.

Improbitas † illo fuit admirabilis ævo, 34
Credebant hoc grande nefas, & morte piandum
Si juvenis vetulo non aſſurrexerat, & ſi
Barbato cuicunq; puer, licet ipſe videret,
Plura domi farra & majores glandis acervos
Tam venerabile erat præcedere quatuor annis
Primaq; par adeo ſacræ lanugo ſenectæ.

Porro ne ſpreta venerandæ ſenectutis [illegible] [illegible] ad [illegible] paulatim [illegible] in majora dilaberentur [illegible] vitia, ita enim [illegible] genere comparatum eſt, ut ſi quis [illegible] adoleſcentia [illegible] & pudoris cancellos ſemel vel iterum perruperit, per raro redire [illegible] ad [illegible] ſaniore [illegible] diſciplina coerceatur arctior. Cumprimis [illegible] ſenum & [illegible] [illegible] eſt [illegible] gravitate morum [illegible] flecterentur [illegible] daretur, [illegible] & inde erga parentes, magiſtratum, patriam honore [illegible] moribus [illegible] Teleclus interrogatus cur apud ipſos in more eſſet, ut [illegible] majoribus natu aſſurgerent, Quo inquit habendo cum honore alieno, [illegible] honorent parentes. *Plut. in Apoph.* [illegible] Albani Caſpii maris accolæ præcipue [illegible] ſenectutem [illegible] venerabantur, quod Seniores loco parentum eſſe [illegible] *Strabo lib. 11.* [illegible] Lacones reverebantur de more non ſolum [illegible] genitores [illegible] obſequebantur, verum omnes etiam ætate [illegible] quibus via decederent, & ſella aſſurgebant, prætereuntibus [illegible] Quoprera [illegible] perabat [illegible] quiſque, non quemodo [illegible] in [illegible] liberis [illegible] & mancipiis [illegible] etiam [illegible] ſuis, quò eorum [illegible] curam [illegible] communem, *Plut. in Apoph. laconicis.* [illegible] *in Rep. Laconum & Juſtinus lib. 3. & Gell. lib. 2. cap.* 14

Sic apud Rom. S[illegible] ectus [illegible] & [illegible] honorem [illegible] tanquam [illegible] majores natu adoleſcentibus [illegible] eſſent. Quocirca [illegible] ſenatus [illegible] ex Patribus [illegible] aut propinquum, aut paternum [illegible]

vis expectabant donec reducendi officio etiam fungerentur. [illegible] voluntaria ſtatione & corpora & animos ad publica [illegible] gis roborabant. breviqueque procella morarum [illegible] tum verecunda labori [illegible] meditatione ipſi D[illegible] *cap.* [illegible] Roma [illegible] tis diebus in lucem [illegible] menſa dabantur, a conſilio quoque [illegible] jusſis deinum reducebantur [illegible] tradi[illegible] eſt, *Ge*[illegible] *cap.* [illegible] gentes qui [illegible] diſcubitu [illegible] [illegible] quibus appareret [illegible] tempore [illegible] [illegible]

[illegible] imbecillitate [illegible] laborantes [illegible] [illegible] quos [illegible] *l.* [illegible] §. [illegible] [illegible] hiſce affectibus [illegible] paſſi quaeſtionis vel tortur[illegible] per [illegible] vel ultimum applic[illegible] non poſſit [illegible] tura locum habeat, ut [illegible] capite ſucced[illegible] [illegible] [illegible] *l. divus.* [illegible] *praeſid.* [illegible] [illegible] *l. Cornel.* [illegible]

Hinc [illegible] [illegible] hominem [illegible] [illegible]

26 [illegible] hominem, *l.* 5. §. [illegible] *ff. ad l.* [illegible] [illegible] *ff. de* [illegible] § [illegible] [illegible]

27 [illegible] *Tiraq.* [illegible] *de paen.* [illegible] [illegible] [illegible]

[illegible]

ſocius [illegible] h[illegible] [illegible]entes, leviori [illegible] premi & expri-mi eis [illegible] *ar*[illegible] [illegible] *rum Sylan.* Porrò [illegible] ipſum quod [illegible] [illegible] ſecundum [illegible] præ medi[illegible] [illegible] patratum, [illegible] re[illegible] ſc[illegible] a[illegible] de [illegible] expedit, exinde ne omnis [illegible] expers [illegible], de[illegible] [illegible] impetuoſa & belluina quouſq; re-ced[illegible] humanitate eo [illegible] brutorum nociva, quæ ma-gis damna, quam delicta [illegible] quod [illegible] beſtiæ, ita [illegible] † a[illegible] [illegible] ſæpenumero [illegible] reſticat [illegible] [illegible] memoriam [illegible] *pa*[illegible] [illegible] inſa-[illegible] pa[illegible] [illegible] bus ut de leone & aliis feris [illegible] Vel [illegible] caput [illegible] vel Principis [illegible], &c. [illegible] [illegible] per-torem [illegible] per [illegible] paulò [illegible] [illegible] *T*[illegible] *de pæ*[illegible]

8. Porro † [illegible] [illegible] hi[illegible] ſit, [illegible] [illegible] in M[illegible] [illegible] calleba[illegible] & pingere [illegible] [illegible] examinari poſſunt. & quæ per [illegible] & [illegible] dent[illegible] [illegible] [illegible] *Nic*[illegible] *in* [illegible] Thomas Mo-rus, Angliæ Cancellarius, [illegible] quos obiter [illegible] ciam.

L[illegible] *igitur* [illegible] *alter,*
Ipſe tamen judex [illegible] *magis*
Pr[illegible] *mente perac*[illegible]
Ille refert [illegible] *mola* [illegible]
Aſpicit [illegible] *quid* [illegible]
A[illegible] *on* [illegible] *mutu*[illegible]

De ſ[illegible]ſtro † null[illegible] [illegible] eſt, [illegible] [illegible] 40
tor [illegible] aliquat [illegible] [illegible] de quibus [illegible] præ[illegible] [illegible] audi[illegible] tis. [illegible] præſ[illegible] ex antecedentibus [illegible] *de præ*[illegible] *2 præſumpt* 2[illegible] *Eberhard.* [illegible] *top.* [illegible] *temp*[illegible] *num.* [illegible] cap-tivus & jam [illegible] [illegible] plenariam, quod [illegible] non eſt, ne maleficiis hom[illegible] [illegible] *de* [illegible] *ſerv* [illegible] *num.* 2[illegible]

Alias ſur[illegible] quò [illegible] [illegible]

M[illegible] [illegible]

pl[illegible] m familiam Rom[illegible] pem pacem cum P[illegible] o [illegible] [illegible], [illegible].

44 Præterea torqueri non debent † [illegible], morboſi, & [illegible] *Const. Crim. art.* [illegible]. So der Beklagte geſchwächte Wunden oder andere Schaden [illegible] der [illegible] Peinlich Frage dermaſſen gegen ihm fürge-nommen werden [illegible] Wunden oder Schaden am mereſten verletzet werde. Quod [illegible] phreneticis atque de [illegible] oleo [illegible] debet. At [illegible] im-[illegible] reſtitu-[illegible] quæ per prudentia cum reis eſt [illegible]. Humanitatis [illegible] † [illegible]

45 [illegible] laborant, quoque procedatur [illegible] tamen, qui [illegible] [illegible] pellente [illegible] [illegible] & [illegible] [illegible] homuncionibus, [illegible] verò [illegible] admoneri & [illegible], ne [illegible] [illegible] extraordinariam [illegible] reum [illegible], & quæ [illegible] [illegible] tuſimus [illegible] remota, illi, qui eſt [illegible] [illegible], neque enim [illegible] bona, quidſi morbo [illegible] [illegible] quæſtionem [illegible] non nihil erit, quod [illegible] [illegible] aliquando [illegible], uti *B[illegible] in tr. crim. pag. mihi* [illegible] de [illegible], ad cujus [illegible] decem [illegible] [illegible] cape, [illegible] [illegible] affectus [illegible] *Tiraquell. de mitig. pœn.* [illegible]. Q[illegible] quæſtio-nis rigoroſæ mitigationem. Cum aliàs [illegible] non [illegible] qui ul-timo ſupplicio affici poteſt, uti ſupra [illegible]. Deni-

46 que torqueri non debet † mulier prægnans, ſcilicet propter periculum [illegible] tus, ut reſpondit *Ulp. in. l.* [illegible] *de pœn.* Sed & [illegible] quadraginta, *Hipp. de Marſil. in l. 1.* [illegible] *Adr.* [illegible] *in deciſ.* [illegible] *Simph. in deciſ. pag. mihi* [illegible], ubi [illegible]: Gentes [illegible] [illegible] [illegible] videri, eum, qui nihil admiſit, [illegible] [illegible] aut binos plecti, cum unus deliquiſſet. [illegible] *Afric. Bœm. de Africa lib. 1. c.* [illegible] *Imp. in §. 2. in* [illegible] quod [illegible] ma-tris ei [illegible] qui in utero eſt, [illegible] debeat, reſpondit [illegible] A[illegible] obſervatum fuiſſe [illegible] meminit [illegible] *dict.* [illegible] quoque jure civili prohibetur, ne mulier prægnans [illegible] quam [illegible] *l. 2. ff. de mort.* [illegible] Regia, cui Gorgias quidam [illegible] mulieris utero in ipſo rogo [illegible] *Plin.* [illegible] de Scypione Africano, quod ex utero matris [illegible] *prim. cap. 10.*

Mor[illegible] Lep[illegible]

8 Leproſi, † qui affectu corporis deteſtabili [illegible] ſtint, qui inſtar cæcorum [illegible] que debilium [illegible] minabuntur, [illegible] delictum [illegible] & exceptum, [illegible] ti eximuntur. Sic quanquam jure civili priſco uti legibus Valentis [illegible] ptonius liberi homines uti ultimo ſupplicio affici non poterant [illegible] ſtione rigoroſa exami nari *Cicero ad Attic.* [illegible] in [illegible] nis [illegible] ſubj[illegible] excarnificabatur, [illegible] *de Franciſ* [illegible] *jure Roman. lib.* [illegible] *cap.* 4. Quapropter læſæ majeſtatis rei, [illegible]

9 in cui † illud hominum genus ſeſe facile addi[illegible] [illegible] ſubjiciuntur. Prope Spiram Nemetum, uti nobis [illegible] tum leproſi noctu cœnobium quoddam [illegible] & moniales [illegible] pertas vi ſtuprarunt. In Franconia cum puella quæ[illegible] deducenda in pagum vicinum, ubi ſponſus habitabat, [illegible] ro, ruſtici, qui comitabantur equites ſponſam, [illegible] celeritate equorum ſuorum, uti [illegible] ipſa puella ſponſa, quæ equo tardiore [illegible] tis pedetentim & gradatim inſequens, [illegible] aberravit, & nocte obſcura obruta, tandem [illegible] illo habitare paſtores. Sed quid rerum? [illegible] ducta in hypocauſtum puella animadvertit, ſe [illegible] Quapropter ſervum in ſtabulo compellit, ut [illegible] cedere poſſit, interea lepro[illegible] decertant, [illegible] puellam forma non [illegible] læ[illegible] primum [illegible] & quo ſibi [illegible] ſponſam [illegible] ſudor [illegible] periculum præ[illegible] verita, cultellum arripit [illegible] du cum leproſo [illegible], ferrum per collum proprium adigit [illegible] adimit pudicitia illæsâ & illibatâ. Conſternati leproſi [illegible] tragicam & inopinatam, ut [illegible] in [illegible] hominem, & [illegible] que cadaver [illegible] facem [illegible] ad [illegible] nobilis [illegible] venatu [illegible] venit [illegible] & [illegible] venientes [illegible] [illegible] reſpondent [illegible] [illegible] & mox [illegible] [illegible] e [illegible] Leproſi [illegible]

[illegible]

ſtem produ[illegible] quã de [illegible] Farinac. in ſol [illegible] illo tractatu de reſtib. *Bart. in l. ex libero* [illegible] quidem negat homines viles [illegible] torquendos eſſe, [illegible] tamen ſententi[illegible] ſuam dicens: Quod torqueri poſſit (1.) ſiquidem [illegible] (2.) ſi vacillat (3.) ſi ponit [illegible] gerat teſtimonio dicendo, *[illegible] in l. præ[illegible] or att. in 1. notabil. ff. de jurejur.* vide prolixe & nervose, *Ægid. Boſſ.* [illegible] *in tit. de tort. teſt pag. mihi.* 1[illegible]4 1[illegible]5. *& ſeqq.*

CAPUT XL.

DE EXAMINE REORVM SVB TORTVRA.

SUMMARIA.

1. *Interrogatio in genere [illegible] tortura remiſſa.*
2. *Anne in ſpecie reus interrogari poſſit?*
3. *Vti Notarius [illegible] interrogare [illegible] qui in [illegible] heredem eſſe, ita nec judex [illegible] Notarius [illegible] reum interrogabit in [illegible] indiſtincto.*
4. *A [illegible] quæ [illegible] reus interrogatus fuerit.*
5. *An tortura [illegible] poſſit eodem actu?*
6. *R[illegible] arbitraria?*
7. *An reus ter torqueri poſſit ſub uno eodemq; actu?*
8. *Quouſq; durabunt vices quæſtionum vel cruciatus.*
9. *Latrunculi & [illegible] nefandorum crimi-num [illegible] & ſæpius [illegible] torqueri [illegible] ſunt.*
10. *[illegible] quomodo in [illegible] interrogari [illegible]?*
11. *Q[illegible] in ſpecie interrogare [illegible] veneficam.*
12. *[illegible] modo prodit[illegible] interrogandus?*
13. *Sortilegus reus, quomodo examinandus ſit.*
14. *Qualiter fur ſit examinandus.*
15. *An fur interrogari [illegible] poſſit [illegible] utrum plura furta commiſerit?*
16. *Fur [illegible] præſumitur retro furatum fuiſſe.*
17. *[illegible] gaudet alieno cibo, vir bonus parat, unde [illegible] parare.*
18. *Malitia [illegible] pro nihilo habi[illegible]*

DE examinibus reorum ſupra nonnihil diximus, jam de quæſtionibus in ſpecie ſic dictis, & examinibus reorum ſub tortura agemus. Ubi duæ potiſſimum conſtituendæ ſunt regulæ. (1.) Ut † interrogatio fiat in genere, eaque [illegible] tortura remiſſa. Illa fundata eſt & expreſſa regula, *in l. [illegible] ff. de qq.* quæſtionem habituris, eſt ait JCtus *Ulpian. d. l.* non debet ſpecialiter interrogare, an Lucius Titius homicidium fecerit, ſed generaliter quis id fecerit, [illegible] magis ſuggerere [illegible] quam requirere videtur. & verba ſunt ſpecioſa textus ſubſequentis. *Divus* Hadrianus Calphurnio [illegible]riano in hæc verba reſcripſit. Agricola Pompeii Valentis ſervus de ſe [illegible] interrogari, ſi dum quæſtio [illegible], amplius dixerit, [illegible] fuerit [illegible] non interrogantis culpa, &c. *adde textum Conſtitutionis Caroli* [illegible] Item/in den vordern Artickeln iſt klärlich geſetzt/ wie man [illegible]

[illegible] Fraiſſ-

[illegible] die [illegible] Marter oder Bedrohung der Marter [illegible] net / nach allen vmbſtänden derſelben Miſſethat fragen / vnd darauff Erkun- digung thun / vnd alſo auff den Grund der Warheit kommen. [illegible] de aber etwa damit verdächt / wann die gefangenen im [illegible] dieſelbe vmbſtände der Miſſethat vorgeſagt vnd darauff gefragt [illegible] vmb wöllen wir daß die Richter ſolchem fürkommen / daß es [illegible] ſondern dem Verweiß / als klärlich in den vorgehenden [illegible]
2 ſteht, *vide Bo[illegible] in tit. de e[illegible] or. num. [illegible] pag. [illegible]* [illegible] re interrogandum eſſe reum ſcribit, quoties certo [illegible] cis vel certo pacto & modo flagitium fuiſſe commiſſum, [illegible] clara & manifeſta extare, ut nihil aliud, quam confeſſio [illegible] Dictarum tradita in medium [illegible] rens [illegible] ctæ nec non [illegible] Carolinæ, cum lege non diſtinguente [illegible] hominis acu[illegible] diſtinctionem vel ampliationem [illegible] tim in cauſa hac adeò gravi & criminali. *Eberh[illegible]* omiſſis ambagibus ut nulla [illegible] complectar, [illegible] rogandum eſſe reum, quam [illegible] torem a Notario, [illegible] dem, *l. heredes, 21. [illegible] D. [illegible] de teſtam.* [illegible] vel confeſſionem ſubinde [illegible] interrogare [illegible]
3 tionem corrumpit, ut † quando Notarius [illegible] quærat ex teſtatore, utrum Mævium, [illegible] dem, *d. l. 21 [illegible] de teſt. l. 29. C. e[illegible] d. l.* [illegible] placuit [illegible] ipſa per ſe [illegible], [illegible] *l. [illegible] de heret. [illegible] in exerc. [illegible]* [illegible] *de [illegible] ne reorum [illegible] in §. 2 [illegible] 21.* [illegible]

Dixi ſupra ſub tortura [illegible] & dolore [illegible], cum ille reſpicaverit, *d.* [illegible] [illegible] Marter [illegible]
4 [illegible] *in pract.* [illegible] huiusmodi fac[illegible] [illegible] uti quæſtio [illegible] [illegible]
5 [illegible]

[illegible]

proſſ longè graviorem. Alias regula trita eſt, quod † tortura repet- 6
tio ſit arbitraria, *Bart. in l. 1. S. §. 1. ff. de qq. Boer. deciſ. 163. num.* [illegible] *& Marſil. in l.* [illegible] *ff. eod. Farer. in pract. crim. pag. 162. Par. de Put. in tract.* [illegible] *pag. 414. & refert Gomez. cap. 13 de* [illegible] *num. 2* [illegible]. Quod de conſuetudine [illegible], ut tormenta repetantur, *Bart. d.* [illegible] *Gramm. conſil. 21. num. 5* ita [illegible] hanc ſententiam reſtringunt, modo indicia [illegible] ſtringentia & pene indubitata militent adverſus reum ſemel tortum. Caveant tamen, ait, *Clar. d. loc. in fine*, judices ne hujus arbitrii prætextu immoderate ſæviant, ſed potius in dubio ad torturam non procedant, multi enim innocentes propter tormentorum ſævitiam confeſſi & condemnati ſunt. hæc Clar. quod tot exemplis declaravimus *cap.* [illegible] *in fine*, & ipſe Clar. [illegible] hac de re inducit, *d. loc. in fine capitis*. ſed cum hæc Clarus ſcribit, ſubintelligi debet aut [illegible] de actibus torturæ diverſis, non de actu unico, qui bina juxta [illegible] admiſſa rigoroſa examina, adeò ut ſiquidem reus ſuſtinuiſſet [illegible] actum duplicis torturæ, adhuc † terreri poſſit, quaſi tertia vice torqueri deberet, [illegible] 7
ſubeſſet cauſæ cur hæc tertia [illegible] intermittatur, ut [illegible] debilitatus ſit reus, & [illegible] mendacii [illegible] veritatis [illegible] [illegible] dicentis, cum multi quodvis [illegible], quam [illegible] ſubire quæſtionem. *l.* [illegible] *ff. de q q.* [illegible] repetendus eſt trinus cruciatus corporis unius actus, [illegible] ut reus ſalvus [illegible] vel innocentiæ vel ſupplicio, *l.* [illegible] *ff. de* [illegible] ſuperque demonſt, [illegible] ſæpè ſub [illegible] quæſtione [illegible] innocentes, ait *Quint. declam. 18.* [illegible] aliquem, [illegible] Cæterum quod [illegible] repetendam [illegible] quæſtionem [illegible] ſuperveniant nova [illegible], id hanc habet [illegible], ſi [illegible] breviter [illegible] & probari [illegible] poteſt, [illegible] de novo [illegible] ceus [illegible] turnitate, res inhumanis eſt & belluina. Quapropter [illegible] judicis officio inquirenti vel accuſatori novas adducere probationes [illegible], vel dimittere reum. Quia autem [illegible] & tritum [illegible] non niſi tertio reus dimittendus eſt, & interea [illegible] repetitionem [illegible] primum leviori, poſtea graviori torturæ [illegible] oculis † [illegible] 8
[illegible] quo recitari poterit ſymbolum Apoſtolicum, reſpectu [illegible] Pater noſter, vel Ave Maria, [illegible] capite antecedentis repetendi comprimis hæc [illegible] quoties [illegible], [illegible] luculenter probari, [illegible] atrox & [illegible] exiſtit, [illegible] *Clar. d. quæſt. 64. in fine*, [illegible] quod [illegible] pidi [illegible] idque [illegible]. Nonnulli [illegible] quoties reus confeſſionem [illegible] poſt [illegible] ſtionem ad locum torturæ, ut [illegible] & repetat [illegible], [illegible] eſſe [illegible], quod [illegible] vel [illegible],

[illegible]

vide Clar. [illegible] *part.* [illegible] Deinde quando [illegible] eis in ſpecie [illegible] expeſtandas eſſe ſponſiones [illegible]
[illegible] † *Carolis Crim art.* [illegible] *art. 47.* [illegible]
[illegible] (2.) quo die & hora [illegible]
armis hominem occiderit (6.) quales [illegible]
[illegible] quid [illegible]
[illegible]
[illegible]
[illegible]
[illegible] & circumſtantias [illegible]
[illegible] quo tempore facinus patraverit (4.) [illegible]
alias miniſtraverit [illegible]
[illegible]
id inveniret (2.) quo tempore [illegible]
[illegible]

11 Si proditione † [illegible]
[illegible] quid [illegible]
[illegible] ubi, quo pacto & modo, item quando [illegible]
[illegible] &c.

12 Si ſortilegus † & artes Magicas [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

14 [illegible] † [illegible]
[illegible]
[illegible]
[illegible]
[illegible]

15 [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

verè [illegible] urgeat furem, ut plura [illegible] crimina, quæſtionẽ novam uſurpaturus, [illegible] exp[illegible] & [illegible] illa [illegible] formula [illegible] bene ſi quidem fur † ætate grandior [illegible] & [illegible] 16 furtante [illegible] primum ſit, quod committitur furtum. Qui enim ſemel [illegible], non [illegible] id eſt, quem ſemel depuduerit, [illegible] vix unquam ad frugem redibit. Porrò [illegible] † gaudet [illegible] quocunque flagitio eum acquirat, 17 modo habeat [illegible] unde domi vivat, *Eraſm. in* [illegible] *Chil.* [illegible] in homine radice [illegible], non [illegible], *Eccle. c. 27.* & tandem [illegible] † [illegible], *Alph.* [illegible] *Tybat. in Para* 18 *lipp. in prin.* [illegible] *de* [illegible] *Marſil.* [illegible] *q.* [illegible] *& Conſ.* [illegible] *n.* [illegible] *31.* ubi [illegible] an & quando in quacunque [illegible] poſſit.

CAPUT XLI

DE CONFESSIONE REI [illegible] SUB TORTURA

SUMMARIA.

1. *Confeſſio probat plenarie.*
2. [illegible]
3. *An* [illegible] *confeſſio* [illegible] *ad* [illegible] *nationem?*
4. *Reus ad docendum errorem contra confeſſionem audiri debet.*
5. *Confeſſio tormentis expreſſa, omnino requirit repetitionem & perſeverantiam.*
6. *Quo reſpectu variatio pariat indicia.*
7. *Materia repetenda torturæ quæ* [illegible] *difficilis eſt & intricata, exponitur.*
8. *Craſſa variatio dicitur, quæ non procul abeſt ab ipſo mendacio.*
9. [illegible] *aliquid addere confeſſioni primæ,* [illegible] *dicitur variare.*
10. [illegible]
11. [illegible] *non eſt vitiata in* [illegible]
12. [illegible] *dicatur?*
13. [illegible] *reperi* [illegible] *quæſtio.*
14. *Indicia generalia* [illegible] *tortura prima.*
15. *Diluuntur quæ* [illegible]
16. [illegible] *quæ indicia quædam reſpectu* [illegible] *indicia.*
17. *Confeſſione non* [illegible] *pœnam parit.*
18. [illegible] *confeſſione* [illegible] *pluries confiteri.*

POſtquam reus confeſſus eſt, [illegible] dici ſolet nulla [illegible] ſupereſſe aliis [illegible] judicis partes, quam ut condemnet [illegible] confitentem, cum † confeſſio plene probet, *Aug. Arim. ad* [illegible] *de* [illegible] *fama publica,* [illegible] *din. de qq. n. 15. Ruin. conſil. 8* [illegible] *lib. 4. n. 7.* [illegible] *Suzar. de ind. & tort. pag. 2* [illegible] *n.* [illegible]

[illegible] non eſt, cum etiam contra confeſſum [illegible] ſponte [illegible] diatur [illegible] quam condemnetur, *Clar. in* [illegible] confeſſum non debet judex ſtatim condemnare [illegible]
2 do reus ſponte † eſt confeſſus, judex mittere [illegible] præfigere terminum ad allegandum quicquid vult [illegible] [illegible] faciendas, quo elapſo [illegible] condemnari [illegible]. Quam practicam [illegible]
l. 2. num. [illegible] *d. rer. quem idem Clar.* [illegible]
3 *princ.* Quæri [illegible] ſolet, an [illegible] † confeſſio [illegible] tentiæ, [illegible] habet, quod [illegible] ſeſſionem [illegible] quidem videtur admitti [illegible] ſpontaneam, in cujus arbitrio erat [illegible] affirmare & [illegible] neg[illegible] invicem [illegible] [illegible] procul dubio [illegible] feſſionem ſponte factam [illegible] [illegible] tur, ut [illegible] *Clar.* [illegible] *quem Clar.* [illegible] *C.* [illegible] *rear.* [illegible] [illegible] & [illegible]
4 [illegible]
5 [illegible]

[illegible] *artic.* [illegible] Gefängnüß führen vnd weiter mit Peinli[illegible] cher Frag [illegible] cum aliis [illegible] repeti [illegible], *Clar. in d. q.* [illegible] *Hip-* [illegible] *Marsil.* [illegible] Audiendus autem Marsilius non [illegible] nem parere repetitionem 6
[illegible] indiciorum purgatione [illegible] omni- [illegible] possit se- ducere, &c. [illegible]
Porro quod [illegible] testes [illegible] & va[illegible] *C. de testibus* [illegible] *num.* 7 [illegible] dextre [illegible] ta & res gravis nec contra [illegible] indicia ante primam torturam [illegible] & [illegible] ter probata, *Clar. d. quæst.* 64. [illegible] Carolina [illegible] der Gefangene [illegible] *Marsil.* [illegible] 4. [illegible] Constitutionis Carolinæ [illegible] satisfacere [illegible] *abi.* Es were dann daß der Gefangene solche Vrsachen [illegible] fürwendet, dardurch der Richter [illegible] solche Bekandnuß auß Irrsal [illegible] fangenen zu Außführung vnd Beweisung solches Irrsals zulassen [illegible]
Præsuppono quod variatio [illegible] Circa vero est illa variatio, quæ [illegible]
[illegible] *num.* 1. [illegible] neque enim [illegible] vel [illegible]
[illegible] *Tiraquel.* [illegible]
[illegible]
[illegible] *O.* [illegible]
[illegible] Quod [illegible] 7
[illegible] tertato prælegi attestata, ut per [illegible]

[illegible] plerum-

piatur & tollatur error. *Felin. in c. per tuas. ext. de teſtib.* [illegible] non [illegible] variatio eſt. † cum extra torturam nonnihil [illegible] te eſt confeſſus [illegible]
12 poſtea revocat indiciis legitime non intervenientibus & probatis, [illegible] *in §. quoniam. Boſ. dict. loc. num. 12.* Quibus [illegible] dein repeti poteſt quæſtio, ut nova extorqueatur confeſſio, [illegible] novo emergentia ſimiliter quæſtionem ſuppeditant [illegible] gunt, nova acquirunt legum remedia, ne delicta maneant impunita [illegible] *Do. in l. 1. Cod. de Epiſc. audient.* [illegible] *cap. 25.* [illegible] res eſt difficilis & tortuoſa non [illegible]
13 ſuper [illegible] & definitive explicata. Sed quæſtio hic [illegible] cum indicium repeti debeat tortura? Reſpondeo, [illegible] non extare [illegible], ſolum [illegible] novum aliquid [illegible] in repræſenti, quia [illegible] generalia ut fama, [illegible] litas perſonæ, perjuriam & quæ alia, per quæſtionem [illegible] uti [illegible] evitimus, [illegible]
14 [illegible] remanent in reatis, ſic † indicia generalia [illegible] remanent & reſidens [illegible]
15 [illegible] indicia nova & ſeparata eſſe oportere [illegible] nem [illegible] judicem? Reſpondeo, [illegible] [illegible] plura & recentiora indicia, [illegible] petitionem quæſtionis [illegible] *[illegible] addit. ad [illegible] R. Franc.* [illegible]
[illegible]
16 † [illegible]
[illegible]
17 [illegible]
[illegible]
18 [illegible]

CAPUT XLII.

DE REVOCATIONE CONFESSIONIS.

SUMMARIA.

1 *Reus an revocare poſſit confeſſionem [illegible]*
2 *[illegible]*
[illegible]
3 *Iudex arbitr[illegible] [illegible] ſufficientes, quæ ad err[illegible] proponuntur.*
4 *Terminus brevis præſcribet ad docendum errorem.*
5 *An errore non probato [illegible]*
[illegible]
6 *[illegible] pr[illegible]*
7 *[illegible]*
8 *De [illegible] torturam, [illegible] quod attendum [illegible]*
9 *[illegible]*
eſt abſolvendus.
10 *An revocatio confeſſionis [illegible] facta ſit attendenda?*
11 *[illegible] per factum pr[illegible] de [illegible] interro[illegible]*
[illegible]
12 *Mandater in numero [illegible]*
13 *[illegible]*
14 *[illegible] repeti poteſt [illegible]*
[illegible]
15 *[illegible]*
16 *[illegible]*
mu[illegible]
17 *[illegible]*
[illegible]

CONſeſſionem de[illegible] factam † [illegible] revocari [illegible] cedens [illegible] diximus, revocari verò [illegible] intervalla dierum [illegible] die quæſtionis & confeſſionis [illegible] tur ad banchum [illegible] id eſt [illegible] ſive cuſtodia [illegible] curia, *d. Conſt. Carol. V. art. 56. Marſil. in [illegible] §. [illegible] num. 1 [illegible] ex Salicet. in l. 2 C. quod met. cauſ. [illegible]* Quod tamen † debeat quid [illegible] ſaltem per unum diem poſt torturam, antequam deducatur ad tribunal, ut ratificet confeſſionem. Sin verò nondum [illegible] dolor torturæ, poſt [illegible] quot demum ad banchum publicè [illegible] quod paulo ante [illegible] & [illegible] rit, jam publicè & judicialiter [illegible] *[illegible] in [illegible] ad Angel. Aretin. in § [illegible] Mar-ſil. [illegible]* Qui ſi confeſſionem revocat & factum negat, det [illegible] *[illegible] d. art. 56. & 57.* qualiter [illegible] admittere reum ad docendum errorem, quâ [illegible] tempore [illegible] præcedenti, &c.

Admittendus autem [illegible] docendum errorem, ſi [illegible] judex † videtur [illegible] hil ſtringere [illegible] eſſe eundem [illegible] qui [illegible] non habent [illegible] neque leg[illegible] *C[illegible]* [illegible] malitioſè reum revocare confeſſionem [illegible] †

 tem-

[illegible] aſſignabil [illegible] eundem errorem ſub [illegible] ei poteſt quæſtio [illegible] quando quæſtio [illegible] ſolummodo [illegible] *Marſil.* [illegible] *num.* 3 Interim [illegible] dictis novis [illegible] rem pu[illegible] res eſt plena [illegible]
5 tis novis, & † [illegible] vel in[illegible] probans [illegible]
6 gunt indicia vetera [illegible] logia [illegible] eſt. Quod [illegible] mplenam [illegible] probationem innocentiæ, *gloſ. in l.* [illegible] *Cod.* [illegible] *recr.* [illegible] *quoniam, num.* 3. [illegible] tis purgare [illegible] indicia, utrumque [illegible] vinculum & [illegible] c[illegible] ut idem [illegible] de quæſtion[illegible] repetitione [illegible] [illegible] *l.* 3 *ff. de reb. credit* [illegible] *Bo*[illegible] *num. & ſeqq.* [illegible] reus in probatione erroris vel innocentiæ deficeris, [illegible] dum, ut quivis reus poſſet revocare confeſſionem [illegible] ſe hinc dilapſurum, quod concedi non deberet, neque [illegible]
7 nitati criminum [illegible] Res † [illegible] teri[illegible] quæ Cæſarea [illegible] phi[illegible] [illegible] *l.* [illegible] & [illegible] ut ait *Hering* [illegible] bunali denuò [illegible] & revocet confeſſionem [illegible]
8 deinq. † tertia vice [illegible] ide [illegible] Reſpondeo [illegible] feſſioni, quam poſterenia & tertia [illegible] vice, [illegible] r verit in revocanda confeſſione [illegible] tem judicia, *Paris de Puteo tract.* [illegible]
9 *num* 5. Hinc [illegible] juris maxima quod [illegible] *Idem Marſil. in l. repeti,* [illegible] *num.* [illegible] [illegible] Mediolani Duc[illegible] [illegible]

[illegible]

dus in excellentia, attamen fuit mihi neceſſe cum liberare, quod nunquam voluit ad banchum juris ratificare illud, quod dicebat in tortura, & indicia non erant [illegible].

Sed quid ſi reus † nominaſſet ſocios ſub tortura ad banchum juris ve- 10
ro [illegible] deductus revocaverit nominationem factam excuſando ſocios: præſuppono [illegible], ubi de ſociis interrogari licuit? uti ex capite antecedenti *de examin. reor.* diximus [illegible] revocatio ſubſiſtat? videtur dicendum quod ſic. Cum enim propter confeſſionem de ſeipſo factam repeti de reo tortura poteſt, ut [illegible] demonſtravimus, quanto multò magis de ſociis [illegible] errorem demonſtraverit. *Marſil. d. [illegible] num.* [illegible] Reſpondeo [illegible] inferri quod cum reus retorqueatur ratio [illegible] eſt, quia confeſſio de ſeipſo novum aliquod indicium ſuggerit, quanquam revocaverit confeſſionem. Ob nova indicia autem repeti poteſt tortura. Ergò. Cæterum quando [illegible] nominat, indicium aliquod contra hos quidem [illegible], qui [illegible] alius [illegible] quoque [illegible] poſſet ſubjugari [illegible] dum ex hac cauſa [illegible] non [illegible] principale vel [illegible] non [illegible] ſub tortura, quam ad banchum [illegible] do [illegible] factam. Aliis [illegible] de hoc [illegible] 11
[illegible] ſecunda vice [illegible] ſuper facto principali, [illegible] principalis ſequitur.

Aliud [illegible] 12
ut ait *Marſil.* [illegible] de [illegible] † [illegible] 13
[illegible] eſt per [illegible] *conſ.* [illegible] *num.* [illegible] In [illegible] † [illegible] proditionis, [illegible] delictis exceptis, jure receptum eſt, ut repeti [illegible] poſſit de ſociis, quod in latrocinio quoque obtinere [illegible] *in L.* [illegible] *de cuſtod. & exhibit. reor.* ibi: ut irenarchæ cum apprehenderint latrones interrogent eos de ſociis & de receptatoribus & interrogationes literis incluſas atque obſignatas ad cognitionem magiſtratus mittant [illegible], nec non [illegible] † falſi, quoad monetarios [illegible] *L.* [illegible] *Cod. de falſ. monet.* 14
[illegible] alios recenſet [illegible] *C. de* [illegible]

[illegible] in hac revocationis materia eſt [illegible] qui [illegible] perſona [illegible] fragilis [illegible] tormentis [illegible], [illegible] *Ulpian.* [illegible] ibi: [illegible] tormenta pati [illegible], ceſſè [illegible] confeſſionè non [illegible] hactenus diximus [illegible] illuſtravimus *ſupra cap. 25 de grad.* [illegible] ut revocare poſſit confeſſionem [illegible]

[illegible]

[illegible] a judice ſibi aſſignato [illegible]. *Part in l. fin. [illegible] pu[illegible]* [illegible] O. [illegible]
15 nor † [illegible] promiſerit judici [illegible] confeſ-
ſionem, qua[illegible] [illegible] ad hoc [illegible] requirit. *Bar[illegible]*
16 *ſic. ſed pone, C. de con[illegible]*. Proinde comparatum eſt de [illegible]
facta, non præcedentibus legitimis [illegible] quæ [illegible] non [illegible]
licite revocari poteſt, quod enim de jure nullum eſt, nullum [illegible]
effectum, [illegible] non ſunt [illegible] cedentia, *l. quætie [illegible]*
l. [illegible] fin. [illegible] uod [illegible] ujus [illegible] un[illegible]ve[illegible] in l. [illegible] [illegible]
17 *in [illegible] in criminibus, ff. de q[illegible]. num.* 14. [illegible] Quæ [illegible]
quoad bannum ratificata non noceat confitenti, [illegible]
[illegible] ſequenti, adeo ut ſicuti reo datur terminus [illegible]
[illegible] quæſtionem, ita [illegible] eidem concedenda [illegible]
[illegible] quæſtio, ad deducendam ſuam innocentiam [illegible]
prætendere poſſit, *Bald. de Periglis in tr[illegible] de [illegible]*
& ſeq.

CAPUT XLIII.

DE EXCEPTIONIBUS CONTRA CONFESSIONEM ſub tortura factam.

SUMMARIA.

1. [illegible]
2. [illegible] *ſtiam p[illegible] [illegible] admitti poſſunt.*
3. [illegible] *ex tura* [illegible]
4. [illegible]
5. [illegible]
6. [illegible] *criminalium* [illegible]
7. [illegible]
8. [illegible] *poteſt* [illegible]
9. [illegible]
10. [illegible]
11. [illegible]
12. [illegible]
13. [illegible]
14. [illegible]
15. [illegible]
16. [illegible]
17. [illegible]
18. [illegible]
19. [illegible]
20. [illegible]

21. *Exceptio confeſſionis declaratoria admittitur.*
22. *Omne dictum obſcurum recipit explicationem ex ore proferentis.*
23. *Quomodo exceptio confeſſionis cum conditione vel qualitate facta, admittatur?*
24. *Exceptio directo contraria confeſſioni qua dicatur, & an ſit admiſſibilis?*

CONtra confeſſionem ſalvo tortura factam allegari poſſunt non tam, quæ propinqua ſunt revocationi, quam quibus regulariter eliditur confeſſio. Exceptiones † vero ejuſmodi vel ſunt generales vel ſpeciales. Generales depromi poſſunt ex communi defenſionis reorum claſſe, dummodò exceptiones nullitatum cum exceptionibus peremptoriis, quæ ex viſceribus ipſius cauſæ emanant, non confundantur, quod ſi tamen defenſionales eſſent neglecti articuli ante quæſtionem, † non dubito, quin illi in modum exceptionis 2
adhuc efficaciter opponi queant. Cum enim poſt ipſam definitivam admittuntur defenſiones reorum, *Felin.in c.conſanguinei, ext. de re judic. n.7. Gail. 2.de pp.cap.8.nu.*. Quidni in hoc proceſſus paſſu ubi quodammodo res adhuc integra eſt longè aliter, quam ante latam ſententiam, quæ † in civilibus ex albo nigrum, ex curvo rectum facere ſolet, *l.25. ubi Dd. ff. de ſtat. homin.* Exceptiones generales ſunto, ut quoties examinantur inquiſitionis acta vel accuſationis actitata, quæ ſi nullitatis † vitio ſcatent, vix eſt ut dextra ſequi poſſit ſententia juſta, ſententiæ res judicata, *l.1.§.hæc ſi autem ff. quod quiſque jur. l.1. ubi Bart. C. de Pedan. judic. t.t. C. à non comp. jud.* Et quanquam † nullitatis querela ut plurimum coram ſuperiori ſoleat ventilari & decidi, *Gail.1.obſerv.42.* Non tamen ambigitur quin nullitas hic ſuppeditet exceptiones ſummè relevantes, quæ ideircò, ut maximè in cauſa criminali coram eodem judice admittuntur & decidi debent, cum † appellationes in cauſa criminali odioſæ ſint & vulgò repudiatæ, qua de re infra de appellat. Inter generales illas & reſpectivè nullitatis exceptiones ſibi primum vendicat locum † in- 7
competentia judicis. Quæ exceptio inſanabilis eſt & ſcutum præbet reo adverſus quoſvis calamitatis ictus, judicatum quippe dici non poteſt ab eo, qui judicandi poteſtatem non habuit, *l.1.§.fin.ff.ad SCtum Tertull & l.1.d.§.hæc autem, ff. quod quiſq; juris, l.2.§ fin.ff.de pœn.* Hinc nullitas juriſdictionis ſemper poteſt opponi & in quacunque parte litis, ſiquidem exceptio hæc malitioſè non ſit huc uſque ſuſpenſa, opponi *gloſſ. in clem de ſeq. poſſ. Roman. ſen. conſil.8*[illegible]*.vol.m.4.num.26.* quinimò † poſt tres ſententias conformes hæc exce- 8
ptio poteſt quoq; cum effectu allegari, *Alex.conſil.*[illegible]*.vol.2 num.*[illegible]*.& ſeqq.* In cauſâ hac criminali confeſſio coram incompetenti, non niſi extrajudicialem actum præbet, adeò ut detectâ † incompetentia & remiſſione factâ, cõ- 9
feſſio hæc ſolummodò generaret indicium non ſententiam, *Aretin.conſ.26. vide Clar.in pr.crim.q.55.num.* Quod ſi tamen judex doloſè vel imprudenter excarnificaſſet reum, craſſam hic ſubintelligo & ſupinam imprudentiam, pœnâ talionis, injuriarũ actione, vel in ſyndicatu pro re natâ tenebitur, *Con-*

 ſtit.

ſtit.Crim.Carol.V.art.61. Nonnulli hæc [illegible] acceptata [illegible] modo confeſſio [illegible] la ſit à parte præſente acceptata, expreſse non tacite, [illegible] aliqui quoq; extrajudicialem illam a[illegible]noſcunt [illegible] quæ facta eſt [illegible] ram judice pro tribunali non ſedente. Se[illegible] [illegible] confeſſione ſub quæſtione facta agimus, adeo[illegible] de rebus diverſis [illegible]

10 diverſum eſt judicium, *argum. l. 31 ff. ad L. Aquil.* Quod ſi vero [illegible] ſit atrox & nefandum, nec non adeò cōſpicuum, [illegible] de veritate [illegible] nihil ambigi poſſit, nihilque aliud remoretur cur[illegible] executionem [illegible] ipſa incompetentiæ exceptio, ſane non video [illegible] do cum pace judicis competentis fiat, *vide Clar. in pract. crim.* [illegible] *num. 6. & quæſt. 96. in fine.* Sin judex competens [illegible] eumque reciperet, nihil aliud ſupereſſe poteſt [illegible] ciat, quod juſtitia requirit, abſurdum enim [illegible] ſi non aliud impedimentum [illegible], quam [illegible] fraus & dolus abſit, cui adſtipulandum non e[illegible] *ff.* [illegible]

11 mus, quod † favore litium finiendarum ſæpe [illegible] veat nullitatibus, *Ordin. Camer. tit. 34.* [illegible] *part. 3.* [illegible]

12 [illegible] Quia † nullitas proceſſus eſt [illegible] partium [illegible] ſolummodo [illegible] decta, *Par*[illegible] 18. *volum. 1. nu. 14. Vant. de null.* [illegible] *p*[illegible] *n. 12. Gail. 1. obſerv. 42. n. 5. & obſerv.* [illegible] ſiquidem [illegible] Quia [illegible] propter [illegible] *p. dec.* [illegible] 169 [illegible]

13 [illegible] † [illegible]

14 [illegible]

[illegible]

nem † attinet ſponte factam, ea nec revocari poſſit, ut illa per quæſtiones 15 expreſſa, nec retractari ex cauſa nullitatis proceſſus, *Marſil. in l.1. §.22.ff.de qq. & conſil. 4. num. 7. & conſ. 150.* intellige hanc ſententiam hoc modo. Si argumenta alia inſtruunt judicium, ut pro veritate ipſa meritò agnoſcat confeſſionem ſponte factam. Cum † nemo ſanæ mentis ſanguinem proprium 16 fundere velle præſumatur, *argum. l. liber homo. ff. ad L. Aquil.* Deinde ſi confeſſio fit principaliter & per ſe, non incidenter, obiter, & per quandam conſequentiam, *Bart. in l. ſi confeſſus, ff. de cuſtod. & exhib. reor.* non pauci exiſtimant, quod ſi nullitas † ex defectu juriſdict. ejus propullularit, confeſſio hæc 17 ſpontanea quoque irrita fiat, *Gomez. cita. tit. de delict. l. n. 8. Clar. d. quæſt. 55.* ubi refert. Quod nullitate craſſa admodum exiſtente, reus abſolvatur ab obſervatione judicii, & de novo agatur propter confeſſionem factam, nempe ne judex litem ſuam faciat ſuam & in ſyndicatu aliquando conveniri poſſit, *Auguſtin. Arimin. ad Aretin. de malef. in verbo comparuerunt.* & *Clar. d. l. ubi dicit* quod hæc ſententia tam in foris quam in ſcholis ſit ſancita. Quemadmodum in Camera † de integro & novo proceditur, quando acta ibi devoluta 18 ſunt imperfecta & nullitate pene inſanabiles. Quoniam ex his quæ inordinate ſunt acta, non poteſt ordinabiliter agi, *c. qualiter clem. 1. de accuſat Gail. 1. obſerv. 42 n. 7.* Similis eſt nec inferior exceptio prior, quæ opponitur contra ipſa indicia ſuper quibus reus tortus & confeſſus eſt, quæ ſiquidem non fuerint legitima, ſufficienter & ſufficienter probata, † confeſſio ad 19 hæc facta quoque eſt nulla & inefficax, quemadmodum ad banchum juris ſæpe ratificata & repetita, *gloſ. in l. 7. ff. de qq. Marſil. conſil. 2. Brun. de ind. & tort. p. 134. n. 3. Bertrand. conſil. 226 lib. 2.* vulgò dicimus. Quod quæ ab initio vitioſa ſunt, tractu temporis nedum convaleſcere, *l. 29. ff. de R. J.* nam

Collapſa ruunt ſubductis tecta columnis.

In tantum, ut nec indicia † legitima ſupervenientia convalidare, juſtificare & ſanare poſſint nullitates ejuſmodi retro commiſſas, nec defectum indiciorum ex accidenti ſupplere, *Bart. in l. 1. ff. de qq. Clar. d. loc. n. 14. & q. 64. num. 9.* ubi addit, quod hæc opinio non ſit recepta ſaltem quoad delicta minuta, ſed & nefanda & excepta, ut criminis læſæ majeſtatis, &c. *Brun. de indic. & tort pag. ... num. 6.*

Porrò exceptio minorennitatis hic omnino attenditur, qui minore enim remoto ... nonnihil criminis eſt falſus ſub quæſtione ... & effectum revocare poteſt, vide ... put antecedens & *Clar. d. quæſt. ... n. 12 Marſil. ... num. 14. ff. de qq.* par judicium eſt de furioſo & mente capto, qui ... jura & privilegia minorum ſibi tributa habent, *vid. part. 1. de indic. generalib. cap. 2.*

In ſpecie opponi poteſt contra confeſſionem ... † quod reus non niſi 21 limitato & certo reſpectu quodam ... confeſſionem, quæ

notarius judicii inſeruerit protocollis pro c[illegible] Cum [illegible] borum locutio, non niſi [illegible]tatum aſſenſum [illegible] monium, quam qualitas adjecta verbis *conf*[illegible] *Clar. d. quæſt. 55. num. 15.* imò quotieſcunque [illegible]
22 cari ab eô, † qui eum g[illegible]t, exponendus eſt. *Bart. in l.* [illegible] *vel omitt. hered.* & factum, quod in obſcuro eſt ex affect[illegible] terpretationem, rapienda quippe eſt occaſio, quæ præbet [illegible] ſum, *l. 168. ff de R. J.* cumprimis autem in criminalibus [illegible] gendâ, ſed de humano ſanguine agitur, *arg. c. odia de R. J. in 6.* [illegible] cum homicida confitetur quidem cædem at non [illegible] adjecta qualitate, nempe, quod occiderit hominem ad ſui [illegible] verborum prolatio quidem homicidii confeſſionem in[illegible] ria, qui ſi ig[illegible] hæc judicialis aſſertio non tã ſcripta vel [illegible] ra affirmative, vel qui magis inde condemnatus confeſſus [illegible]
23 prio prædicta, at non excluſive, ſed determinativè, [illegible] qualitatem annexam confeſſioni probare nequeat, [illegible] ficetur & qualitas adjecta pro [illegible] habeatur, *Jaſ.* [illegible] *in tit. de confeſſ. num. 19. Clar. d. quæſt. 55. num. 1*[illegible] *Bon* [illegible] Nonnulli adferunt, quod adjecta hæc cõfeſſio [illegible] intervenienteque quæſtione, ſiquidem reus prob[illegible] ſariam, *Clar. d. l. loc. Tiraquell. de pœn. cauſ.* [illegible] pugnat haud immeritò, *Clar. d. l. loc.* Quam [illegible] ſtatuit. Quod ſi reus confiteatur delictum ne[illegible] alter[illegible]tem, convictus de qualitate negata [illegible] negiſſet.
24 Denique exceptio † directo contraria [illegible] do reus ſeſe offert in continenti probaturum, [illegible] diametro obſtet, *Boſſ. in tit. de confeſſ. num. 60. Clar.* [illegible] teſt reus ſe excuſare & aliquid deducere [illegible] tamen poſſit ſimul ſtare cum ipſa confeſſione, [illegible] prorſus enervet. [illegible] quoque ibidem, [illegible] & extra quæſtionem ratificata [illegible] o carere. *Clar. d. l. loc. in fine.*

Caput

CAPUT XLIV.

DE REPLICA ACCUSATORIS VEL FISCALIS Exceptionum, contra confeſſionem, eliſivâ

SUMMARIA.

1. *Rei nonnunquam negant evidentiora.*
2. *Poſitio unius non eſt excluſio alterius.*
3. *Reus diuturno carceris incommodo moleſtari non debet.*
4. *Reus plura proceſſus diverticula quærens, carceris incommoda ſibi ipſi adſcribat.*
5. *Re[illegible]endum eſt reorum calumniis.*
6. *Qui cum ratione legis loquitur juridicè loquitur.*
7. *Miſera eſt ſcientia illorum, qui non audent ſtatuere aliquid, quod non ſcriptum vel dictum ſit prius.*
8. *Judicia criminalia procedunt uti civilia, ubi jure expreſſo non aliud eſt deciſum.*
9. *Practica hujus replicæ oſtenditur.*
10. *Litis conteſtatio abſorbet exceptiones dilatorias.*
11. *Quæ crimina non relinquant poſt ſe manifeſta veſtigia, non ea deſiderare [illegible] inquiſitionem.*
12. *Fatuus in culpa, ſapiens [illegible] in pœna.*
13. *Minor privilegia allegare [illegible], quibus ſe [illegible] indignum.*
14. *An confeſſio [illegible] ſpe gratiæ promiſſa vel blanditiis aliis facta, pariat [illegible]?*
15. *N[illegible] de [illegible] define ordinato [illegible]*
16. *Finis [illegible] veritas*
17. *An judex admittere [illegible] duplicat[illegible]*

QUoniam uſus perſæpè demonſtravit, experientia rerum magiſtra, *§. omnium, Inſt. de ſatiſdat.* comprobavit, reos quo eludant S. Juſtitiam, toties quoties † negare etiam evidentiora, ipſa rei neceſſitas & rationis naturalis integritas dictitavit, in hoc revocationis vel impugnationis pūcto, admitti actorum accuſatorum vel relatorum replicas, ad reprimendam ſcilicet reorum protervitatem, ne delicta maneāt impunita, *l. 22. C. de pœn. l. 3. Cod. de Epiſ. audient.* Quinimò *Conſtitutio Crim. art. 57.* admittens exceptiones adverſus confeſſionem, non excludit acta ulteriora neque † enim poſitio unius eſt excluſio alterius, quin potius hæc uti relata ſe invicem arguunt, reciprocum εἶναι conſtituunt & ſeſe mutuò afficiunt, *Eberhard in topic. in loc. à correl.* 1 2

Neq; hic adverſatur: Si dixeris, cauſas criminales deſiderare celerem expeditionem, (1.) ne † reus diuturna carceris injuria præter fas & miſericordiam humanam torqueatur, &c. *Tiraquell. de pœn. cauſ.* 4[illegible]. (2.) Quod ſine legum textu nihil ſit affirmandum ſtatuendum, *Novell. 22. &c.* Reſpond ad (1.) reum † ſibi ipſi debere imputare, qui vanis & futilibus procraſtinationes dilatat exceptionibus, *argum. l.* 2[illegible] *& l. 1[illegible]8. ff. de R. J.* cujus negativæ aſſertioni non confeſtim fides habenda, ſed argumentis cauſa examinanda eſt, ut ait *Ulpian. in l. 1. §. 4. in fine, ff. de qq.* qui ſi vel perperam demonſtrat confeſſio- 3 4

 nis

[illegible] errorem vel prorſus nihil præſtitit, ecquid abſurdius, jam [illegible]
5 dum, † non reſiſtendum reorum calumniis & [illegible] & [illegible]
leſtiis, veritati partæ non inhærendum? quod ut [illegible] re-
plica hæc omninò admittenda.

Ad 2. Quod non judaice, ſed juridicè hæc juris maxima ſit intelligenda.
6 Qui † enim cum ratione legis loquitur, is quoque legitimè & [illegible] di-
cere cenſetur, cum ratio ſit anima legis *Eberhard. in topic. in loc. [illegible]* [illegible]
ſcire leges non eſt verba earum tenere, ſed vim ac poteſtatem, *l. [illegible]* [illegible]
ut Evangelium [illegible], ita lex non conſiſtit in verbis ſcripturarum [illegible]
non in ſuperficie ſed in medulla, non in ſermonum foliis, ſed in radice ra-
nis, *c. [illegible] Marchion. 1 quæſt* 1. vel ut Pedius ait, quotiens lege aliquid [illegible] vel
alterum introductum eſt, bona occaſio eſt, cætera quæ [illegible]
utilitatem vel interpretatione vel juriſdictione ſuppleri, *l. 13 [illegible]* [illegible]
propter *Paul. de Caſtro in l. Clodius, ff. de acquir. vel omitt. hered.* [illegible]
7 eos, † qui trepidant & quorum ſcientia non eſt adeò [illegible] au-
deant ſtatuere quicquam, quod non ſit dictum [illegible]
habeant, *Anton. Quetta [illegible] num. 5 [illegible] conſil. 4* [illegible], ubi [illegible],
quod juſtius & æquius ſit illi adhærere [illegible]
rationibus, etiamſi Imperator ſit in contraria ſententia, *arg. [illegible]*
ff. de minor. Angel. [illegible] 1. cum [illegible] juſtitia [illegible]
argumentis, *Bald. in l. [illegible] C. [illegible] Matth. de [illegible] deciſ. Neapol. [illegible]*
S. [illegible] num. 6 & ait Panormitan. in cap. [illegible], ext. de [illegible] [illegible]
li privato, ſi meliorem adferat rationem, [illegible] credendum, quam [illegible] Pa-
pæ. Sed quid pluribus, Regula [illegible] eſt [illegible]
8 ria † criminalia procedunt ad inſtar [illegible] jure [illegible] non
reperitur, *Clar. in pract. crim. q. [illegible] n. [illegible]*

9 Practica † itaq; hujus replicæ [illegible] Exceptionis [illegible]
[illegible] dilatoriarum, ut quadam cognitionis [illegible]
10 [illegible] exceptionem [illegible]
[illegible]

[illegible]

criminibus † non remanent veſtigia clara & manifeſta, eorum inquiſitio 11
eſt ſupervacanea, ubi ſola quærela partis & confeſſio rei ſufficit ad condemnationem, *Clar. §.fin.q.num.11.* Qui opponit minorennitatem & abſentiam procuratoris reperi eidem poteſt [illegible] malitia, dolus immenſus & delicti atrocitas, ut [illegible] fatuus in culpa, ſapiens demum fiat in pœna. 12

Porro quod minorum † privilegia allegare non debent, qui proprio 13
facto ſeſe eiſdem ſpoliavit, neque enim indiciis ſtringentibus & evidentia ipſa quaſi loquente, pravis & ſceleratis adoleſcentum moribus eſt connivendum, quin potius provincia purganda malis hominibus, *l.3.ff.de off.præſid.*
Vulgò etiam excipi ſolet contra confeſſionem ſpontaneâ † quod ſit ſpe gratiæ 14
vel blanditiis & quaſi ſub & obreptitiè emanata, quæ confeſſio an pariat pœnam? Vario modo diſquiri ſolet, videtur negandum eſſe, per *cap.ſane extr.de renunc.* pleriq; tamen affirmãt, uti *Archidiacon. in c.nos in quenquam, 11.q.1. Felin.in cap.afferte, & c. accedens ut lite non conteſt. Paris de Put. in tract. Syndic. §. ſalvus conductus, & §. tortura.* Si enim ſervaret promiſſionem judex, potius peccaret in bonum publicum, cujus intereſt ne delicta maneant impunita, *l.3. de Epiſ.audient.* hinc jure admittitur dolus bonus *l.1.ff. de dol. malo. Cotta in memor. in dictione dolum bonum.* Sic Claudius Cæſar matrem negantem quendam juvenem, qui vere ejus filius erat, proprium filium eſſe, coegit ad confeſſionem veritatis indicto ei cum ipſo juvene matrimonio, *Tranquill.in Claud.cap.15.* Carolus M. certus quod vel Pater vel filius, quos captos detinebat, quendam occidiſſent, incertus tamen uter eorum? juſſit utrumque ſuſpendi, at cum pater, qui verè deliquerat nullam videret redemptionis ſpem, ſaltus eſt & agnovit propriam culpam & ita filium innocentem ab inimicorum ſupplicio liberavit, *Andr. de Iſern. in cap.1.§ publici latrones, de pac. tenend. in uſ. feudor. Tiraquel. in l.8. Cod. de revoc. donat. numer. 8. Covarruv. 1. reſol. cap.2. num.16. vide Boſſ. in tr. crim. de exam. reor. n.4. Marſil. in l.1.nu.79.ff de qq.* ubi non obſcurè & rationibus & exemplis demonſtrant, quomodo permiſſum ſit jure judicibus veritatis indagandæ ergò nonnihil ſimulare in hoc paſſu. Et ſane † quærum de [illegible] diſceptatio niſi frivola 15
& temeraria, ſiquidem de hac ordinatio conſtiterit, † actorum & judicii fi- 16
nis eſt veritas, quæ ſi apparet, actum erit [illegible], finis actiones coronat, non ex floribus ſed fructibus cognoſceris eos per noviſſima. Cumprimis verò [illegible] hæc ſententia, quoties [illegible] fruſtratus in confeſſione reus perſeveraverit. *Dec. in l.65. ff. de R. J. & l. unic. C. de ſent. de eo quod intereſt, num. 25. Hippol. in l.1. ff. de qq. Alciat. in l. [illegible] ff. de V. S.* tranſeunt verò in eo plerique, quod confeſſio ita extorta [illegible] niſi [illegible] extraordinariam pariat. *Covarr. d.loc.* Sin verò conſtiterit confeſſionem [illegible] factam citra metum [illegible] tionis vel quæſtionis atrocitatis [illegible] confeſſio omninò [illegible] exſerit, *gloſſ. in c. de hac in [illegible] Tiraquel. [illegible] nu.9.*

Res

Reo & cauſa hæc ut ut ſit, & quæcunque colore [illegible] ſe [illegible] ret reus, ſi quando tamen reſponſi & allegari queant [illegible] ſe, quæ alias inferre poterant quæſtionem, nihil obſtat [illegible] [illegible] inferri debeat pœna ordinaria, *Covarruv.* [illegible] communici poſſet & ſeſe inſinuare hanc gratiæ & confeſſioni [illegible] modo ut aufugeret & vitaret pœnam ordinariam. At ex [illegible] [illegible] hujuſmodi obliquis & anfractibus malitioſis indulge [illegible] *ff. de P. I.*

17 Præterea ſi quando viderit neceſſarium eſſe judex † [illegible] teſt pro arbitrio ſuo duplicas res ſed non niſi ſtricta litis [illegible] ſi non plus, tantundem ad minimum tribuendum reo, quantum [illegible] ſatori, quia partes reorum dicantur favorabiliores, &c. Imo [illegible] tribuendum reo eſt, quam actori *Azo in ſumma, ff. de reb.* [illegible] *conſtat, Gail. 1. obſer. 31. num. 12.* ubi plures adducit pro hac [illegible] thoritates inter cæteros, *Dd. Angel. conſ. 2*[illegible] [illegible] ſentiarum ſumma. Ut (1.) actori faveatur in principio litis [illegible] quia actor in dubio ad litigandum admittitur, reus verò [illegible] cium rapitur, in medio proceſſus & actori & reo jura [illegible] tas indagetur, in fine reo, ut quo poſſit hic juris beneficio [illegible] ſolutionem impetrare, in dubio enim abſolvitur reus, *Azo* [illegible] Quapropter non niſi in favorem reorum receptum [illegible] cum. Das dem Beklagten der letzte ſatz gebüre / &c. Sed hac in re [illegible] ſuetudo & ſtylus locorum eſt attendendus, qui pro lege habendus [illegible] *de con. ſtit. c. 2.* [illegible] *eprehend. in 6. Gail 1. obſ. 1. n.* [illegible]

CAPUT XLV.

DE SENTENTIA.

SUMMARIA.

1. *Sententia eſt vel abſolutoria vel condem-natoria.*
2. *Sententia eſt finis jud* [illegible] *toria*
3. [illegible] *ſententia proprie dicatur interlocu-*
4. [illegible] *ſententiam*
5. [illegible]
6. [illegible] *requirat* [illegible]
7. [illegible]
8. [illegible]
9. [illegible]
10. [illegible]
11. [illegible]
12. [illegible]
13. [illegible]
14. [illegible]
15. [illegible]
16. [illegible]
17. [illegible]

SEntentia † [illegible] vel eſt abſolutoria vel condemnatoria, de [illa agit] [illegible] Crim. [illegible] in Crepeti, n. 35. ff. de qq. de hac B[illegible] in tr. crim de ſentent. num. [illegible] pag. 476. Nam fabricata tela proceſſus [illegible] ut R[illegible] de ſentent. pag. 119. conſequens eſt, ut veniatur ad finem [illegible] † finis imponitur per ſententiam definitivam, &c. Dic[itur] autem ſententia a ſentiendo [illegible] prout idem refert, [illegible] c. numer 2. ex eo quia judex judicat ſecundum quod ſentit, l. ſicuti, §. ſed ſi, ff. ſi ſervit. [illegible] de ſententia [illegible] hic nullus eſt ſermo, cum quæcunque [illegible] & decretum judicis ad cauſam & rem proceſſus faciens † dicatur interlocutoria, Bald. [illegible] Specul. in tit. de ſententia, [illegible]. Sententia † autem [illegible] ferenda, 3 B[illegible] in tit. de ſent. d. lo[c]. quæ requirit citationem [illegible] de jure Civili [illegible] cum authent. qui ſemel & l. 9. Cod. quom. & quand. [illegible] judi[illegible] quæ [illegible] ad reſpondendum in [illegible] quando pars citanda [illegible] ad videndum [illegible], vel ad publicationem proceſſus, l. ſi quando, C. de te[illegible] Bart. in l. [illegible] Cod. quom. & quand. [illegible] & [illegible] in l. ſi [illegible], §. Julian. ff. de dam. infect. [illegible] citatio [illegible] in genere ſufficit pro trina, imò † ſola [illegible] 4 [illegible] ſententia publicanda [illegible] in præſentiarum, jure attenditur, [illegible] partem de ſe [illegible] in termino, Dec. in cap. [illegible] in [illegible] † citatio [illegible] continere debeat [illegible] l. 2 C. de [illegible] mæſtos penates, ut [illegible] Ba[illegible] d. loc. num. 8. [illegible] tamen & hoc [illegible] practica cotidiana longè diverſum [illegible] cum [illegible], omnibus & ſingulis in acta concluſis, [terminus] ad audiendum ſententiam [illegible] præfigitur breviſſimus, modo † utraq; partes citentur, l 4. C. de a[illegible] 5 dum excluditur cauſa fiſcalis. Fiſcalis enim vel patronus fiſci [illegible] citandus eſt l. fin. C. de adv[illegible] l. 1. ff. Divus & l. ſi fiſcus, ff. de jur. f[isc]i. [illegible] dem eſt, ut ſententia rata ſit, offenſa vel querelante parte non citata, Ba[ld]. d. loc. num. 2[illegible]. Aliàs fiſci patrono mulctam poſtulante, quæ † [participanda] eſt 6 [illegible] [illegible] ille mulctam integram exigere & [illegible] non excludi [illegible] de [illegible] Bart. in l. [illegible] que [illegible] in [illegible] Nam † [illegible] 7 inte[illegible] damnatus, [illegible] juris [illegible] Bart. in l. [illegible] [illegible] teſtes falſos, [illegible] damnatus, [illegible] Alexand. in l. [illegible] tur, col. 4. quæ ſententia tamen [illegible] eſſe [illegible]

fuerit in lite, testes lite pulsi & auditi fuerint, *Bart.* [illegible] Diximus ſupra
10 ſententiam vel eſſe abſolutoriam, vel condemnatoriam, abſolutoria † eſt decretum vel ſententia judicis, quâ judex, expeditis omnibus [illegible] requirebat, reum [illegible] innocentem abſolvit, cujus [illegible] effectus eſt,
11 ſemel † abſolutus, ſi carceres de novo conjici non debeat, niſi [illegible] ſupervenientibus cauſis & indiciis [illegible], *Boſſ. de ſentent. num.* [illegible] Quod [illegible] [illegible] recentia & nova emerſerint contra eum, [illegible] delictum, abſolutio decernatur, id eſt [illegible] hoc [illegible] [illegible] ut reus abſolvatur à prima inſtantia, habeat [illegible] *ea quidem, Cod. de* [illegible] *qui adulter.* [illegible] *C. de adult.* [illegible] Quod [illegible]
12 [illegible] † judices de innocentia [illegible], relaxato [illegible] pœna & moleſta cuſtodia, [illegible] ſententia proferatur, *l. 2. Cod. de exhib.* [illegible] Quod [illegible]
13 lo nedum injungatur † abſoluto, juramentum purgationis, *Boſſ.* [illegible] *num.* [illegible] de quo juramenti genere, *vide* [illegible] Qui [illegible] in criminalibus cauſis accuſatore non [illegible] vulgarem hic *l. qui accuſare, Cod. de* [illegible] *Boſſ.* [illegible]
14 Cauteam † neceſſariam in præſ[illegible]um do[illegible] & [illegible] *in l. repet.* [illegible] *num. 5.* ibi: in relaxatione rei judex faciat apparere [illegible] eſſe a ſubitam contra ipſum reum cum mode[illegible] [illegible] demonſtrabant & ideo quia fuerunt purgata [illegible] pertinet culpabilem judex mandavit eum relaxari, [illegible] eundem eſſe [illegible] judex aliter faciendo teneretur in ſyndicatu [illegible] *Conſtitutio Criminalis Caroli V. art.* [illegible] [illegible] Verdacht [illegible] Peinlichen [illegible] [illegible] erfunden. Peinlich [illegible] oder [illegible] beklagten [illegible] haben doch Richter und Ankläger [illegible] Peinlichen Fragen [illegible] [illegible]

[illegible]

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[illegible] ſententia abſolutoria [illegible] *Con-
ſtit. Carol.* [illegible] *Adjutoria traditur* [illegible] rerum
[illegible]. Auff die Klag [illegible] ſo zu-
gegen [illegible] ſtehet [illegible] auch [illegible] Antwort/
vnd [illegible] Erfahrung vnd [illegible]
ſo alles nach [illegible] Keyſer Carl [illegible] vnnd deß Reichs Ordnung deß-
halb [illegible] mit welcher Vrtheil vnnd Recht
von aller Peinlicher [illegible] iſt [illegible] dann ſache / daß der Ankla-
ger ſeiner Klag [illegible] Vrſach [illegible] / dardurch der Richter [illegible]
werden möchte / die Koſten vnd Schaden [illegible]
Vrſachen zu compenſiren [illegible] Partheyen
Schaden oder Abtragshalb [illegible]
ſie nach Anweiſung obgemelter Ordnung [illegible] Rich-
ten vor demſelben Gericht / oder ſo von Amptswegen geklagt wird vor dem-
ſelben ſo von Amptswegen [illegible] Oberkeit außtragen.

Porrò ſententia condemnatoria [illegible] judicis, in
qua reo illatis fidelitera [illegible], reum condemnat in pœnam certam jure defini-
tam & delicto [illegible], *B*[illegible] *d.c. de ſenten.* [illegible] *Maran.* [illegible] *de ſent.* [illegible]
[illegible] antiquitas [illegible] verbis hac in parte, uti videre eſt apud
[illegible] in hanc ſententiam, ſententia Valerii Maximi
[illegible] Cyprianum Martyrem e libello recitata [illegible]. Tascius Cy-
prianus [illegible] *in lo;* *quem* [illegible] *Martyre.* Nos
[illegible] noſtri [illegible] ac quidem 7
Conſtit. Carol. [illegible], ut poſtquam omnia [illegible]
in judicio exhibita & reproducta ſunt, cauſa quæ concluſa eſt, [illegible]
& [illegible] ea [illegible] & [illegible] omnia [illegible] omni
diligentia aſpiciant & ponderent, ac deſuper quanta [illegible] cognitio-
ne & intelligentia [illegible] & quam [illegible]
a juſtiſſime [illegible] conſtituunt [illegible],
quæ [illegible] conceptæ fuerint, [illegible] N quærenda [illegible].

[illegible] ces [illegible]
[illegible] jure [illegible] exhibitis & produ-
[illegible]
[illegible] Porro poſt [illegible]
[illegible]
[illegible]
[illegible]
corpori aut [illegible]
[illegible] prædicto [illegible]
atque inſuper *juxta* [illegible]

Deniq; quando reus per definitivam [illegible] declaratur, judex loco ſolito bacillum ſuum frangat, [illegible] quo medio ſuo juramento [illegible] exequatur. [illegible] a judicio ſurgat judex, curetq; ut lictor [illegible] exequi poſſit. Præterea [illegible] poſt ſententiam [illegible] lictor [illegible] ad locum ſupplicii trahit, præter palam ac publicè [illegible] denunciatque, adeoq; magiſtratus [illegible] nomine ſub [illegible] juberi facit, lictorem nulla ex parte [illegible] eventu fuerit, nullas ei violentas manus injici, quando vero [illegible] ſententia [illegible] abſolvitur, quo pacto [illegible] docuerit, id ipſum ita, ut [illegible] Aſt [illegible] [illegible], quam abſolutus [illegible] proſequi tenentur. *Conſtit. Crim.* art. [illegible]

Cæterum ubi ultimum ſupplicium non [illegible] corporis afflictiva demum [illegible] rigoroſo hoc, qui ſequitur, modo. Habita diligenti [illegible] ac inquiſitione juxta Caroli V. Cæſaris, [illegible] ploratione facta, prout de jure [illegible] judice conſtitutum, propter [illegible] ad [illegible] illum *art. Conſtit. Crim.* 196. ubi vero [illegible] juſtin lingua [illegible] erit, ſic transform [illegible] meaſtro [illegible], ſeu infami torque poſita [illegible] es ad publicam conceſſionem [illegible] [illegible] & [illegible]. Porro [illegible] cè ac palam [illegible] ſeu [illegible] in permiſſionem magiſtratus [illegible] ubi digiti ſunt abſcindendi [illegible] cave [illegible] digiti dextri quibus [illegible] [illegible] [illegible]. Tandem [illegible] [illegible] palamque [illegible] reglo, [illegible] interdicatur.

CAPUT XLVI.

DE RELIQUO IURE SENTENTIARUM.

SUMMARIA.

1 *Quæ ad validitatem* [illegible] *ſit.*

2 [illegible] *nullam* [illegible] *pugnatum.*

3. *Ine* [illegible] *tiam.*

4 *Quid* [illegible] *ſententia* [illegible]

5. [illegible] *produ* [illegible] *criminalibus.*

6 *Sententia* [illegible] *nulla.*

7 *N* [illegible] *partis* [illegible] *non* [illegible] *ferri de* [illegible] *ſententia.*

8 *An* [illegible] *ſententia* [illegible]

9 *Explicatur l.* [illegible] *C. de ferii.*

10 [illegible] *in latrones capi* [illegible] *die feriato* [illegible] *poteſt.*

11 [illegible] *dies* [illegible] *reducuntur.*

12 [illegible] *die feriato.*

13 [illegible] *non poteſt* [illegible] *aqui-* [illegible]

14. *Sententia in* [illegible] *nec publica* [illegible] *eſt* [illegible]

15 *Sententia* [illegible] *requirit* [illegible]

16. [illegible] *ſententia* [illegible]

PRæterea ad validitatem † ſententiarum pertinet, ut ſententia publicetur [illegible] competenti tempore vel loco [illegible] & [illegible] ſententia ſeratur [illegible] nullitatis, quanquam ſtricto loquendi modo, omne [illegible] impugnatum, cum non entis non ſint qualitates, [illegible] 2
falib impuber. l. [illegible] *§. poſt d.* [illegible] [illegible] tes dicendo, nullitates potiſſimum ſignificari [illegible] ſententia feratur ſuper inquiſitione nulla, de quâ re ſuo loco, [illegible] partis ſententiam [illegible] *de ſent.* [illegible] Si a non competenti judice pronunciatur ſententia, [illegible] in capite *de except.* [illegible] 4
[illegible] ejuſdem defenſionibus, *Hippol.* [illegible] §. [illegible] *de appell.* [illegible] & aliis nullitatum ſpecies [illegible] judex, omnem [illegible] Quanquam enim regulariter non admittatur appellatio [illegible] dubium tamen non eſt, quin [illegible] ex cauſa nullitatis [illegible] *Boſſ.* [illegible] *num. 9.* ubi prohibetur [illegible] non prohibetur nullitas maxime evidens & in ſequentibus [illegible] porlis, ſemper poteſt opponi exceptio nullitatis etiam contra ſententias conformes, &c.

 Sed

6 Sed quod [illegible]
[illegible]
[illegible]
& hæc [illegible] Poëta.

[illegible]

Sic [illegible]
7 [illegible]
[illegible]
[illegible]
[illegible]
8 [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
9 Deſparz, & [illegible]
[illegible]
[illegible]
[illegible]
10 [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
11 Sic videmus [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible] ratio viva exprimitur, *in l.* [illegible] *Cod. eod.* 12
[illegible] pereat commoditas cœleſtis provi-
ſionis [illegible] locus Palladii de re ruſtica *lib* 1 *cap.* [illegible] neceſſitas
[illegible] adeo ut [illegible] nullos quoque metere liceat die feſti-
[illegible] *d. l.* Denique ſcribit *Roz in deciſ. Lituan.*
[illegible] num. 181 Si lacere frumentum die divinæ [illegible] ſacro fas eſt, cur non
[illegible] fruges convehere, impendentibus forſi-
tan imbribus [illegible] que tollere, omnem enim la-
[illegible] rerum, quæ terra aluntur,
fructuum [illegible] qui nisi [illegible] exantlatus in iis labor inanis eſt,
Sanè qui [illegible] quædam opera ruſtica feriis
permitti [illegible] quæ feſtis ex-
ercen[illegible]s.

Fas & iura ſinunt rivos deducere, nulla
Religio vetuit, ſegeti prætendere ſepem,
Inſidias avibus moliri, incendere vepres,
Balantumque gregem fluvio merſare ſalubri.

Sanè Poeta [illegible] merſare ſalubri [illegible] gregem, non videtur in genere
conceſſiſſe [illegible] pecoris die feriato. Nam uti [illegible] intentione homi-
num [illegible] non niſi [illegible] ergò, non lanæ gratia,
opus hoc [illegible] permittendum eſt, [illegible] *d.* [illegible] *c nu* 87.
ibi: non lanarum gratia, quod [illegible] plerique [illegible]
ſed medicinæ, eſſe [illegible] Columella [illegible]
corrigantur [illegible] & [illegible] tempore [illegible]
con[illegible] in quibus [illegible] febre, & alia non
pauca, quæ [illegible] petes, [illegible] *de re ruſtica* [illegible] *cap. ultimo*, quo-
rum quædam Marcus C[illegible] ſuo *de re ruſtica* [illegible] *cap.* 11 *attigit.* &
hos ſequutus *Macrobius ſatur. lib.* [illegible] *cap.* 16 [illegible] properantibus
lectori [illegible] præferenda eſt [illegible]
[illegible] locus pro formali [illegible] non ſufficit [illegible] † quæ ad ſo- 13
[illegible] actus faciunt [illegible] per æquipollens, *l.* 6. *Cod. de* [illegible] *& inter-*
[illegible] ubi [illegible] Imperatores [illegible] † [illegible] publice, 14
[illegible] & [illegible] *Bald.* [illegible] *d. l.* [illegible]
p[illegible] *C* [illegible]
[illegible] *ad n-*
ſtrum [illegible] Hinc [illegible]
[illegible] x, &c. [illegible] &c. [illegible]
[illegible] *&* [illegible]
tia, num. [illegible]
& ſeqq. aliquot numeris [illegible]

[illegible]

25 tiam † criminalem noctu vel die feriata, [illegible] iudici [illegible] ſententiam non poſſe, quod etiam [illegible], Conſtit. Crim. Caroli V. art. 9 [illegible] hic ſtatutis & expeditis conſequens eſt [illegible] de expenſis [illegible] quoque ſubijciamus, de quibus eadem, Conſtit. Crim. [illegible]
16 toria agitur ſententia in puncto torturæ [illegible] † [illegible] Anklaͤger allein ſein Koſten / vnd der Beklagte [illegible] dem er ſolche verdacht vrſache gegeben [illegible] übrigen Gerichts koſten als für den [illegible] richts oder Gefengnuß halber ſchuldig tragen.

CAPUT XLVIII.

DE EXPENSIS IN CAUSIS INDICIORUM.

SUMMARIA.

1. *In causis criminalibus [illegible] ratio expensarum habetur.*
2. *In causis [illegible] condemnandi [illegible].*
3. *Calumnia [illegible] criminalis [illegible].*
4. *[illegible] non condemnatur in expensas.*
5. *Expensa [illegible] captum [illegible].*
6. *[illegible] in expensis [illegible].*
7. *[illegible] ad calumniandum.*
8. *[illegible] Conſtit. Crim. Carol. V. [illegible].*
9. *[illegible]*
10. *[illegible]*
11. *[illegible]*
12. *[illegible]*
13. *[illegible]*
14. *[illegible]*
15. *[illegible]*
16. *[illegible]*

1 In cauſis indiciorum † æqua ratio [illegible] habendam [illegible] iudicis [illegible], quæ [illegible] ſolent in hoc, [illegible] Conſtit. [illegible] Caroli V. [illegible] regula, [illegible] [illegible] [illegible] [illegible]
2 [illegible] † [illegible] [illegible] [illegible]

movet in [illegible], *Bald. in l. qui crimen, C. de accuſ. n.* 28. tamen refert, ſe nunquam vidiſſe interpretatorem vel relatorem criminum in expenſas condemnatum, idque optime [illegible], ne metu expenſarū deterreantur homines ab ejuſmodi officiis, & [illegible] maneant impunita, quibus connivendum non eſt, *l.* [illegible] *Cod. de* [illegible] *de off. præſid. Conſtit. Crim. Carol. V. art.* 2[illegible]4. ibi: Vnd auff forcht [illegible] Vnkoſten Recht vnd Gerechtigkeit nicht verhindert werden [illegible]. [illegible] ſententia repudiata verius eſt in expenſas condemnandum eſſe inſtigatorem [illegible], eumq; calumniæ convictum, ne [illegible] præbeat [illegible] mortalium, quibus † turgent homines invidi & malevoli, juxta illud: [illegible] perniciſe expertus ex Æ[illegible] Ennio [illegible] quem [illegible] *cap.* [illegible] *num.* [illegible] 3
eodem art. dictæ Conſtit. 2[illegible]4. Judex ipſe inquirens vel Fiſcalis, † qui [illegible] omnis expers præſumitur, nullas expenſarum [illegible] præſtat, 4
Clar. d. q. [illegible] *num.* [illegible] aut judex, [illegible] procedit ſimpliciter [illegible] officio [illegible] luminoſo [illegible] conſecrmnem, qui de illis [illegible] ſolis [illegible] bene [illegible] *num.* [illegible] Cæterum [illegible] accuſator vel [illegible] † in expenſas [illegible] condemnandus tam ante, quam poſt judicium ritè cœptum, quia temeritate [illegible] ationis expenſæ refundendæ ſunt, [illegible] *de* [illegible] vel [illegible] *de dol. & contum.* [illegible] *Cod. de* [illegible] *num.* [illegible] In litis [illegible] expenſas condemnandum [illegible] non ſit rogatus, [illegible] *Chil. Kon. p.* [illegible] 4[illegible] *num.* [illegible] Alias, qui accuſator ſuccumbit, non omnis † [illegible] quod minus eſt in expenſas condemnandus eſt, ut cum parentes [illegible] liberorum, cum deferuntur læſæ majeſtatis diffamati, ſodomiæ, hæreſeos, *Clar. d. loc. num.* [illegible] præcipue [illegible] generali [illegible] concurrente. *Idem d. loc. nu.* [illegible] *Guid. Pap. deciſ.* [illegible]46. *C*[illegible] *conſil.* 1[illegible]8. ubi tamen diſtinguendum [illegible] inter denunciatorem, [illegible], & accuſatorem, cum illis utique, ut paulo ante dixi, mitius eſt agendum, *Clar.* [illegible] *loc.* Neq; hic obſtat † *Conſtit.* 5
Crimin. Carol. V. art. 61. quæ dicit: Quod compenſandæ ſint expenſæ [illegible] [illegible]. Reſpondemus [illegible] non quod in [illegible] abſolutoria accuſatori [illegible] præparetur, [illegible] quæ ante quæſtionem probavi indicia [illegible], qui quoque [illegible] ſe ad majus quoddam onus non [illegible] ſiſtit [illegible] co omni calumnia caret, nec in expenſas condemnandus, [illegible] Quod autem reus ferat ſuos ſumptus, nec eorum [illegible], [illegible] ter redditur, quia † is faber fortunæ fuit [illegible] & [illegible] ſui & cauſa omnis hujus mali [illegible] quod [illegible]

Q [illegible] [illegible]

ipſum derivarit, *text. d.Conſt.art.* [illegible] ibi. Denn wird gemelter [illegible] ſelbſt Urſache ſeyn etc. Sed malum damnum, quod quis ſua culpa [illegible] intelligitur ſentire *l.* 203. *ff. de R. I.* Ergo.

Ex quibus infertur, quod ſi quidem reus fuerit inops, quem [illegible] coactus ſit purgare expenſis publicis, ne tamen hoc caſu prægravandus [illegible] tor vel inſtigator, ſcilicet qui ſuum præſtitere officium, id quod [illegible] probarunt, modo quod reus cruciatus patienter tormenta [illegible] denuò defatigare & aſſumptus refundendos, quos [illegible] urgere, ſumma videtur injuria, cum afflictio non ſit addenda afflicto [illegible] ſit propter miſericordiam reddere rationem, quam propter crudelitatem [illegible] *[illegible] .Bald.co* [illegible] *Grat.* [illegible] *arg. d.Conſtit, art.* [illegible] ubi † magiſtratum teneri dicitur [illegible] nullos in hac ſubjecta materia, cum [illegible] una cum accuſatore ratione [illegible] non admodum prægnantioribus [illegible] trario ſenſu argumentum ex *d.artic.* [illegible] in jure eſt frequens & infallibile, *Eb*[illegible] verba textus illativa hæc ſunt [illegible] Nachdem er [illegible] arget in applicabit eadem *Conſtit. art.* [illegible] Es wird [illegible] Anklåger ſeiner Klage rechtmåſſige Urſache [illegible] gemacht werden möchte [illegible] Koſten und Schaden [illegible] [illegible] compenſiren und [illegible] etc.

Quod ſi autem dubium vel controverſum [illegible] [illegible] vel in eodem judicio propter cauſæ [illegible] [illegible] qui ex officio accuſarunt, [illegible] *d. Conſtit. Caroli V. art.* 201. *Clar. in d.* [illegible] [illegible] † [illegible] in hoc judicio [illegible] [illegible] Quod calumniatori † ex officio [illegible] [illegible] calumniator, [illegible] tamen † [illegible]

[illegible]

Peinlichen Gericht / ſoll ſolcher Gerichtskoſtung vnd Atzung halben ziemliche vnnd gleichmeſſige Ordnung machen / daß dadurch niemand überflüſſig beſchwerdt / vnd die rechtmäſſigen Vbelthäter deſto leichtlicher zu gebürlicher Straff bracht / vnd aus forcht vnbilliches Vnkoſtens / Recht vnd Gerechtigkeit nicht verhindert werde. Vnd ſoll ſonderlich ein Ankläger für eines Beklagten Atzung vnd Wartgelt dem Büttel Tag vnd Nacht über ſiben Kreutzer zu geben nicht ſchuldig ſeyn. Wo aber bey kommen were / in ſolchen Fällen minder zunehmen / dabey ſoll es bleiben / vnd was aber auff Gerichts vnd ander Koſten auff Beſetzung deß Gerichtes / der Schöpffen oder Vrtheilen Koſtgelt / auch Gerichtſchreibern / Bütteln / Thürhütern / Nachrichter vnd ſeinem Knecht aufflauffen würde / ſoll durch deß Gerichts / oder deſſelben Gerichts Obrigkeit ohn deß Klägers Nachtheil bezahlt werden.

CAPUT XLVIII.

DE APPELLATIONIBUS IN CAUSIS INDICIORUM vel accuſationum.

SUMMARIA.

1. [illegible] iam latam [illegible] dicis [illegible] iudex [illegible].

2. An in materia [illegible] admittenda ſit appellatio?

3. Iudex [illegible] tenetur [illegible] ipſorum indiciorum repudiata [illegible] ſententia.

4. [illegible] inhabitati, & [illegible] de [illegible] an adeo [illegible] indicari?

5. [illegible] qualis [illegible].

6. Quando causa admittenda ſit appellatio [illegible] indiciorum?

7. Appellari regulariter non poteſt, in cauſa [illegible].

8. In [illegible], appellari [illegible].

9. Falſarii appellare non poſſunt.

10. Monetarii falſi, laeſae maieſtatis crimen incurrunt.

11. Camera recipit cauſas criminales, ex capite nullitatis.

12. In caſu raptus, non appellatur.

13. Condemnatus non appellat in [illegible] mutui, mulcta, & debito Fiſcali.

14. [illegible]

15. [illegible]

16. In [illegible] Camera [illegible] procedatur.

17. Proceſſus [illegible] in Camera, nonnunquam 40 annis durant.

18. In cauſis [illegible] & [illegible] arum, ſola facti veritate [illegible] mandata ad petitionem Fiſcalis.

19. [illegible] contributionum [illegible].

20. Debitor [illegible].

21. [illegible]

22. [illegible] mandatum, quod [illegible].

23. [illegible] appellatur [illegible].

24. [illegible] & [illegible] admiſſio [illegible].

25. Appellatio [illegible].

2[illegible]. *Pecus [illegible] in [illegible] de [illegible] [illegible].*

27. *Explicatur regula [illegible] non appellat [illegible].*

28. *An & quando in criminalibus [illegible] [illegible] appellare nemo [illegible]?*

2[illegible]. *Appellatio non recipitur in [illegible].*

3[illegible]. *[illegible] [illegible] [illegible] & [illegible] [illegible] in [illegible] [illegible] [illegible] [illegible].*

31. *[illegible] non appellat.*

3[illegible]. *[illegible] [illegible] [illegible] [illegible] [illegible] [illegible].*

3[illegible]. *Appellatio non recipitur in [illegible] ad [illegible].*

34 *[illegible] appellatur.*

3[illegible]. *[illegible] [illegible] ſam.*

36 *[illegible].*

37. *[illegible] in [illegible] [illegible] penſ[illegible].*

38. *An appellari [illegible] [illegible] officio [illegible].*

3[illegible]. *[illegible] [illegible] appellatione [illegible].*

4[illegible]. *[illegible] [illegible] [illegible] [illegible]?*

4[illegible]. *A quibus [illegible] [illegible] pertineat [illegible].*

1 POST ſententiam latam † expectandos eſſe dies [illegible] tenorem [illegible] [illegible], tradunt *[illegible]*, *Bart. in* [illegible] *qui* [illegible] [illegible]. Quod [illegible] [illegible] [illegible] [illegible] [illegible] quadam caſus, [illegible] [illegible] [illegible] [illegible] *[illegible], cap.* [illegible] [illegible] [illegible] [illegible], quod [illegible] appellationes in cauſis criminalibus [illegible] *[illegible] & ſequenti.* [illegible] [illegible] [illegible] [illegible]

2 In cauſis † iudiciorum [illegible] appellationem [illegible] [illegible] [illegible] *[illegible] P[illegible]* [illegible] 4. ubi ait [illegible] Quod [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ubi [illegible] Quod [illegible] [illegible] Grammaticum [illegible] *[illegible]* [illegible] Quod [illegible] [illegible] Vicarii Regni [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] *[illegible]* [illegible]

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ad producendos ſuos articulos defenſionales, *Guid. Pap.* [illegible] *deciſ.* [illegible] 4. *Caſon. de ind. pag.* 60. Sed quia in reliquum [illegible] hanc copiam nec terminum agendi contra judicem [illegible] Dixi [illegible] copia indiciorum [illegible] danda [illegible] † ex officio tenetur [illegible] verum eſt, uti [illegible] apparet, ſequitur nequaquam [illegible], propterea ad quæſtionem [illegible] audito reo, nec adverſus [illegible] que defenſo, multò minus juxta cautelam illam Paponis inordinatè [illegible] procedere in gravi & atroci [illegible] juris materia, cum [illegible] & utriuſq; manus abſciſſione durior, [illegible] poſt torturam eſt ſuſtinere ſupremas anguſtias, *Boſſ. de tort.* [illegible] *num.* [illegible] *pag.* [illegible] Rejicienda itaq; ſententia *Clar. in d. quæſt.* 62. *n.* [illegible] qui exiſtimat, [illegible] copiam indiciorum nec terminum detentionis judicem [illegible] procedere poſſe ad torturam. Concederem hanc opinionem [illegible] Advocatus vel Procurator prudens, qui in genere illi eſt [illegible], *Conſtit. Crim. artic.* [illegible] Jtem Klägeren vnd Antworteren ſoll jedem Theil auff ſein begehr ein Fürſprech [illegible] laubt werden [illegible] *art.* [illegible] *artic.* [illegible] *Clar. d. quæſt.* [illegible] ubi quærit an Advocatus [illegible] ducas. Quamquam teſtes & Notarium [illegible] debent adjungi [illegible] examinatori [illegible] protocollis [illegible] ſibus, [illegible] eſt, non ſecus uti conſuevit adhiberi [illegible] cujus notarium unum vel alterum juramento in [illegible] Ubi enim majus eſt periculum, ibi cautius [illegible] agendum per tritiſs. & notiſſima & [illegible] abundans non nocet, *l.* [illegible] *Cod. de teſt.* [illegible] *ff. de* [illegible] Quæ [illegible] ſunt 4
clariſſima, adeo ut ſola reorum confeſſio [illegible] indubitatis & luce meridiana clarioribus [illegible] ferri poſſit ſententia diffinitiva, remotâ quæſtione, vide [illegible] *repet.* [illegible] At quid opus verbis, ſcriptis, eorumq; commu [illegible] ubi rerum teſtimonia adſunt, cum ſol facibus [illegible] debeat [illegible] *omnia.* [illegible] Quin quid [illegible] prætextu reus comminiſci [illegible] & nectere [illegible] conquiſitas technas, revocationes confeſſionum [illegible] ſubornationes falſorum teſtium & quaſvis [illegible] as jus & judicium diverteret & eludere [illegible] hominum [illegible] indulgendum [illegible] eſt, *l.* [illegible] *de R. I.* Neque hic obſtat [illegible] quod [illegible] danda [illegible] vel [illegible] qui deli- 5
ctum [illegible] confeſſus *vide* [illegible] Imò quod confeſſionem [illegible] quamcunq; revocare liceat, & errorem docere vel defenſionem deducere, *d.* [illegible] longè [illegible] in paſſi [illegible] concedendum, cum [illegible] quod plus eſt licet, [illegible] quod minus, [illegible] non debet, *l.* 21. *ff. de R. J.* Reſpondemus [illegible] nos præſupponere [illegible] Clari defendendam, [illegible] eaque [illegible]

cienter probata, in præſentiarum iudicia quæ [illegible] & quæſtio- [illegible] inde facta, quæ [illegible] [illegible], proce[illegible] erroris demonſtrationem [illegible] neque iſti reo non præcluditur via, qua [illegible] poſt quæſtionem [illegible] hanc confeſſion. Ut ſi [illegible] penitus [illegible] controverſia [illegible] in idem recidit, poſt [illegible] ciliatione admiſsa. Sed ad rem revertar ipſam: [illegible] eſt, in delictis exceptis & atrocioribus de [illegible]
4 nes ſed quid in cauſis indiciorum? † Dicendum [illegible] appellationibus deferendum eſſe. Cum a quo rem [illegible] quoque ſingula removeantur ſpecies, *Eberh.* [illegible] ipſe probationis ratio quæ quoad [illegible] tur & ſtringat quantum ad decretum torturæ, [illegible] per quod demum veritas delicti manifeſtetur, [illegible] ſtinguendum eſſe, an indicia ſint ſufficientia & [illegible] legitima & decenter demonſtrata, aut quod [illegible] tia. Si indicia juſte & decenter ſunt probata, [illegible] apparent evidentiora. Sane tyrannicum & crudele foret, [illegible] rarum in puncto indiciorum, ex ſolo illo, quæſtioni [illegible] delictum eſt atrox & nulla miſericordia dignum, cauſa [illegible] put Auguſtum Cæſaris, Reipublicæ [illegible] & [illegible] la conſequentiæ ratio [illegible] [illegible] cum ſine indiciis ſufficientibus, [illegible] rente [illegible] nihilominus properare ad quæſtionem, &c. Ut [illegible] ex ſuis principiis [illegible], [illegible] eſt, [illegible] appellationes [illegible] [illegible] & præſen[illegible] requirit.

Appellari itaque non poteſt (1.) in cauſa † criminis læſæ majeſta[illegible] divinæ [illegible] blaſphemiæ [illegible] [illegible] [illegible] 188. *vide* *Marant.* [illegible] *appellation.* [illegible] Quia [illegible] *C.* [illegible] *Felin.* [illegible] *de* [illegible] Reipublicæ intereſt ut delicta [illegible]
8 [illegible] *C. de* [illegible] appellari non poteſt, [illegible] † latrocinii [illegible] *ff. de* [illegible] Quod id genus [illegible] impune poſſe [illegible]

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in ſpecie de rebellibus hanc concluſionem accipit, *Bart. in extravag. qui ſint rebelles, num.* 12. in verbo rebellando, quam opinionem communem eſſe ſcribit, *Boſſ. in tit. de hæret. num.* [illegible] *crimen læſ. majeſt. num.* [illegible] quanquam *Clar. in §. læſæ majeſtatis, num.* [illegible] hanc ſententiam impugnet & diſtinguat in hoc articulo, *vide d. loc.* [illegible] appellare non poſſunt † rei L. Corneliæ de fal- 9
ſis, quam ſententiam Dd. reſtringere ſolent ad falſos monetarios, † *per l.* 10
1. C. tit. de falſ. monet. ibi: appellandi etiam privato licentia denegetur, ratio quæ [illegible] urgens exprimitur, *in l. 2. C. eod.* ubi falſarii majeſtatis crimen incurrere dicuntur. At læſæ majeſtatis rei appellandi beneficium perdunt per ſupra dicta. Ergo & falſi monetarii, quò ſpectant Alchimiſtæ, & id generis homunciones, *de quib. Lather. de cenſu. in cap. de Alchim.* præſtigiatores & falſarii. Refert *Zwinger. in theatr. human. vitæ volum.* [illegible] *lib.* [illegible] *pag.* [illegible] Quod Anno Imperii 14. Anaſtaſii Imperatoris Græci, impoſtor quidam [illegible] numero [illegible] producentur [illegible] oculos hominum præſtringeret [illegible], argentarius [illegible] [illegible] ad paupertatem [illegible] fama vulgatâ captus, & ad Anaſtaſium adductus, [illegible] cum [illegible] ac marg [illegible] obtulit. Sed Imperator [illegible], inquit, [illegible] me profecto [illegible] in caſtellum quoddam relegavit [illegible] Porro appellationes non recipiuntur [illegible] veneficii & [illegible] bilis. Cum plus [illegible] hominem [illegible] atque ſit proditorio & clandeſtino [illegible] vi aperta, quam uſurpant latrones, *vide part. 3. cap.* [illegible] *princip.* Neque [illegible] quod ſcribit *Jurman. tom. 2.* [illegible] *mer. pag.* [illegible] referens in cauſa quadam venefici [illegible] ne clauſula [illegible] in Camera decreta, ne torqueretur mulier ſine legitimis indiciis. Reſpondeo. [illegible] eſſe planum: nam licet Camera non recipiat regulariter appellationes cauſarum criminalium, *Ord. Cam. tit. 28. part.* [illegible] §. 6. Item nachdem [illegible] non tamen dubium eſt, quin † ex capite nullitatis cauſæ criminales ad Ca- 11
meram ſpectent, *Gail.* [illegible] *n.* [illegible] *Frider. Mind. in. de proceſſ. cap.* [illegible] *And.* [illegible] *ben. de Saxo* [illegible] *non pro* [illegible] *jur. cap. 2. num.* [illegible] Quod [illegible] mulier ſine indiciis quæſtioni fuerit expoſita, rectè ſeſe [illegible] Cameræ nempe articulo & cauſæ nullitatis quæ [illegible] fundat etiam in matrimonialibus, *Pet. Frider. Mindan. de proceſſ. extr. cap.* [illegible] non recipiuntur appellationes regulariter à raptoribus † virginum, monialium, fœminarum honeſtarum, nec non viſtupratoribus, maſculorum venere [illegible] & [illegible] *l. 1. § ſi autem* [illegible] *de rap. virg. And.* [illegible] *quæ ſunt regalia col.* [illegible] *Marant. in* [illegible] *quando appellatur num. 29.* [illegible] Sed [illegible] Doctorum ingeni [illegible] ex-

rapto

ceptionis, crimina hæc vel illa [illegible] appellabi[illegible], & [illegible] in [illegible] [illegible] tuunt in cauſis criminalibus non admittendas [illegible] &c. [illegible] propter pedem hic figo adhærens [illegible], [illegible] nes eſſe inappellabiles, niſi in cauſis nullitatum proceſſus, [illegible] figuris, de quibus dicetur capite ſequenti.

Pro re nata autem in [illegible] campo [illegible] dicere [illegible]
13 non appellabilibus in rebus fori civilis. [illegible] Itaq. non app[illegible] nitus in cauſa mutui [illegible] liquida, [illegible] *nendum.* [illegible] *Cod. quan. appel.* [illegible] Quandoque tamen ubi [illegible] proceſſus nullitas ad ipſum [illegible]
14 *d. loc. num.* [illegible]. Quemadmodum [illegible] eoru[illegible] privat[illegible] teſcat, ita [illegible] integritas, [illegible] tio non ſat ſuper qua eſt fundata, præ ſe fer[illegible] illud [illegible] privatus habet. ne audiat illud Tiridatis apud Tacitum [illegible] nibus privatæ domus, at de alienis certare [illegible]
15 perbelle & ſcite *Gail. 1* [illegible] *cap.* [illegible] *in* [illegible], ibi dicet [illegible] ſummariæ, in quibus ſola facti veritate inſpecta [illegible] ad ordinarias cauſas, quæ [illegible] requirunt, & [illegible] partis in dubium revocantur, [illegible] probatur hæc ſententia textu legis apertiſſimo [illegible] *util.* [illegible] *C. de conv.* [illegible] *de b. lib.* [illegible] *l. unic. C.* [illegible] *nu. Cod. de iure* [illegible] Cæterum ubi cauſa ſint liquida [illegible] [illegible], *Gail. d. l. loc. n.* [illegible] quam ſententiam [illegible] communis, quæ dicit in cauſa liquida & [illegible] procedendum eſſe, *Alexand. ab Imol. & Angel.* [illegible] *re* [illegible] *Barbat. conſil.* 18. *lib.* 1. *in fine*, [illegible] *n.* 6. Hinc [illegible] [illegible]

[illegible]

terantur, quod † citatio fiat, articuli cum nominibus teſtium producantur, 16
& commiſſio in communi forma decernatur pro examinandis teſtibus, remota tamen litis conteſtatione, & reſponſione ad articulos, remotis juramentis quibuſvis, aliisque proceſſus ordinarii notis & requiſitis, *Gail. 1. obſerv 6. numer. 3. & 4.* licet hi proceſſus † ſummarii nihilominus in Camera 17
ſæpè 20. 30. 40. durent annos, ut refert *Gylman. in deciſ. Cam. in ſymphorem. tom 2. pag. mihi* 270. Spiræ enim lites ſpirant & ſerò exſpirant, *Parth. litig. c. 1. lib. 1. num. 23.* Porrò in cauſis † penſitationum & collectarum Imperii ne- 18
dum citatione opus, ſed ſolâ facti veritate inſpecta petuntur à Fiſcali mandata ſine clauſula, eaque ad inſtar cauſarum executivarú, uti ſupra diximus, paſſim decernuntur, confeſtim expediuntur. Cum enim † hæc aliaque onera ob 19
bonum publicum conſervandum à ſtatibus Imperii conſenſu unanimi in ſeſe transferuntur & ſæpe receſſibus & reverſalibus hinc inde factis, contractis, confirmantur, non tam ex fide obligatoria, eaque tabulis publicis conſignata ad obſervationem ex promiſſorum conſtringuntur, quam quod Reipublicæ ſtatus, communis patriæ ſalus celeriorem contributionum ſolutionem requirat, ne rerum gerendarum nervis deficientibus, mox contabeſcat ipſum Reipublicæ corpus. Hinc eſt quod † debitum Fiſcale ante diem quoque 20
exigatur neceſſitate id exigente, quæ pudorem neſcit, *lib. 1. C. de condict. ex L. Bald. ibid.* quod non tantum de debitis fiſcalibus propriè ſic dictis, quam de Imperii collectis & cõtributionibus eſt intelligendum, quam primum enim ordines Imperii in ſolutionem collectarum vel tributorum conſenſerunt, facti ſunt debitores fiſci, qui confeſtim præceptivè & executivè ad præſtationem ejus, quod portio cuivis aſſignata infert, urgetur, & ita in Imperio ſervatur, ait *Gail. dict. loc. num. 7.* Cauſas criminales † à Fiſcale agitatas quan- 21
tum concernit, ipſæ pro gravitate ſua juxta diſpoſitionem Conſtitutionis Carolinæ nec non juris communis ventilabuntor, neque enim diverſum aliquod conſtitutum reperio in Fiſcale accuſante, prȩterquam accuſatore privato, niſi quod fiſcalis non ſatisdet, juret, in expenſas condemnetur ſcilicet, qui Reipublicæ cauſa & nomine agit quicquid agit, qui † inſtar minoris quo- 22
que reſtituitur in integrum, quod actori denegatur privato, qua de re ſparſim ſupra, &c.

2. Appellatio † non recipitur in cauſa ſyndicatus quo ad retardan- 23
dam vel impediendam executionem, *l. nulli, ubi Dd. C. quor. appell. non recip. Robert. Marant. in Spec. aureo, pag 6. de appell. num.* 302. Cumprimis ſyndicatus reatu, in delictum aliquod publicum tranſeunte, ut quando peculatus repetundarum vel de reſiduis convictus & condemnatus eſſet reus, niſi nullitatis cauſam prætendat probabilem, quæ ex actis, quæ notorium faciunt, ſi ullis tricis & ambagibus eruatur, *vide part. 3. noſtri tractatus in cc. de ind. pecul. repetundar. &c. Paris de Puteo in tr. ſyndic. paſſim in fine, ir quo remitto Dominum lectorem.*

24 3. Non recipitur † appellatio ab Aſſeſſoribus, collegis curiarum, ſecretariis, miniſtris, apparitoribus, nunciis, quos pro admiſſo, coërcuit judex vel magiſtratus, *c. 1. & 2. quæſt. 6 l. nulli. 3. C. quor. appell. non recip.* ut cum in officio errarunt, vel prætextu officii nonnihil fuerunt prævaricati, *d. l. 3. Spec. de appell. §. in quibus verſ. Marant. dict. loc. num. 301. Tiraq. de pœn. cauſa. 58. n. 3. vide part. 1. de iudic. gener. c. 92.*

25 4. In cauſis † alimentorum, cauſarum piarum, decimarum, &c. ne ſubtractis alimentis per litigia appellatoria, quæ ſæpenumero ad cornicum ætates durant, egens, miſerabiles perſonæ, vel Eccleſiarum miniſtri fame contabeſcant, vel ſcandalo peſſimo ſtationes ſuas reſpectivè deſerere, aliudque vitæ genus, quod Clerico turpe eſt, inducere cogatur, *c. tua nobis, ubi gloſſ. & Dd. de decim.* hinc dicimus: Quod alimenta negare ſit necare: nemo enim
26 de vento vivere præſumitur, uti in Cephalonia † pecus brutum abigitur in montes celſiores, ut ibi hauſto vento vivant, & ſaginentur, ut ſcribit *Valer. Maxim. lib. 1. c. 8. vide Spec. de appell. d. §. in quibus, §. 4. Marant. d. loc. num. 305. Rebuff. in tract. de decim.*

27 5. Confeſſus † non appellat, *l. 2. C. quor. appell. non recip.* quæ regula in foro civili æque ac criminali haud immeritò attendatur. Cum enim ſuper chyrographo manu & ſigillo debitoris roborato, executive procedatur, & ſi quas habet exceptiones altioris indaginis reus, eæ ad proceſſum ordinarium devolvantur per ante dicta. Ecquid diverſitatis ſuper liquido, quod confeſſione debitoris judiciali vel extrajudiciali fit ſuperque demonſtrato, exploratum eſt, concedi plures adhuc litium anfractus & ambages, juxta illud hodie conſtat, hodie agatur, hodie executio perficiatur, &c. Sanè ſi executio fieri debet in cauſa hac liquida, exceptionibus quas reus oppoſuit, ſalvis & ſibi reſervatis, nihil diverſitatis apparet, cur non eadem & quidem ratione præſtantiori appellationis beneficium denegetur reo, vel ſin deferendum querelæ vel provocationi ejus, ſaltem quoad exceptiones altiorem indaginem deſiderantes admittatur appellatio, præſuppono autem hic judicialem confeſſionem, eamque à parte adverſà acceptatam: hinc vulgata illa maxima juris, confeſſus non appellat, &c. *l. abſtinendum, C. quor. appell. non recipiuntur. Gail. 1. obſervat. 82. num. 22.* neque enim quis contravenire poteſt ſuæ confeſſioni, *l. generaliter, Cod. de reb. cred. c. per tuas de probat.* quæ pro veritate habetur re ſpectu confitentis & adverſus confitentem. *Dyn. conſ. 4. col. 3.* exſuperans omnium teſtium & cujuſvis inſtrumenti fidem, *Bald. conſil. 192 lib. 2.* hinc regina dicitur probationum in civilibus propria confeſſio,
28 *l. 1. ubi Dd. ff. de interrog. act.* in cauſis † criminalibus non aliter confeſſio appellationem deſtruit, niſi & probatio criminis una adverſus reum ſtringat, quæ duo copulativè requiruntur, ait *Marant. dict. loc. num. 292. Damhoud. in prax. crim. cap. 149.* neque hic obſtat, *c. Romana, §. ſin autem de appell. in 6.* cauſis

ex ſola confeſſione condemnatur reus remotâ appellatione. Reſpondent aliqui, appellationem hanc ex d. c. Romana effectum quidem devolutivum parere, nequaquam verò ſuſpenſivum, adeò ut judex à quo, etiam emanatâ inhibitione procedere & exequi valeat per regulam. Quod judex † à quo 29
non teneatur deferre appellationi, cui reſiſtit notorium, *per text. c. cum ſit, c. pervenit & c. conſuluit clem.* 1. *de appell.* confeſſio autem notorium inducit, *Gail.* 1. *obſervat.* Ergo. Cautela igitur hic ſuccedit egregia, ut appellator in ſupplicatione mentionem expreſſam faciat exceptionis, erroris, contra confeſſionem factam, quam ſubticens vix impetraturus eſt appellationem cum inhibitione effectivâ, nam tralaticium eſt: coram judice † appellationis re- 30
vocari demum poſſe confeſſionem in inſtantia priori factam & doceri error allegatus, *l. 2. in fin. C. quor. appell non recip. ubi Bart.* adferens & regulæ prædictæ omninò inhærens, nepe appellationem non evacuari, niſi copulativè hæc duo concurrant (1.) confeſſio (2.) & probatio facti ſive civile ſive criminale fuerit? *Marant. d. loc. n.* 292.

6. Non † appellat contumax, *l. 1. C. quor. app. non recip. l. ex conſenſu,* 31
§ fin. ff. de appell. Quis autem contumax propriè dicatur, ſupra *in c. de contumac.* luculenter demonſtravimus, ubi duo hæc viciſſim copulativè deſiderantur (1.) citatio perſonalis (2.) abſentia omnis neceſſitatis vel impedimenti expers, nonnulli addunt, ut (3.) citatio ſit peremptoria, *l. poſt edictum, §. fin. ff. de judic. ibi: abſentem ex peremptorio condemnatum, &c.* Porrò fictus † contu- 32
max quin appellet, non eſt dubium, *Bart. in l. fin. ff. de in integ. reſt. Bald. in l. ea quæ, ff. C. quom. & quand. judex, &c.* fictus cõtumax autem dicitur ad cujus notitiam non pervenit citatio, neque qui perſonaliter, & peremptoriè fuit citatus, *Bald. d. loc. Marant. d. loc. num.* 288. hinc fictus contumax non mulctatur, quia dolo caret, *Alex. in l. 1. ff. ſi quis judic. non obtemp Bald. in l. 25. Cod. de appellat.*

7. Condemnatus actione † ad exhibendum non appellat, *Spec. in d.* 33
§. de quib. ratio eſt quia cauſæ requirentes celerem expeditionem, non admittunt impedimenta appellationum, *Jaſon. in l. 1. col. 1. ff. de feriis Spec. in d § de quib. verſ.* 8.

8. In cauſa † juramenti delati & relati, non admittitur appellatio, 34
l. generaliter, §. ſed juramento, Cod. de reb. credit. Jaſon. in l. admonend. col. 21. *ff. de jurejur.*

9. Appellatio † frivola non devolvit nec ſuſpendit cauſam, *c. cum ap* 35
pellationibus de appell. in 6. adeò ut hic appellator poſſit excommunicari, *Abb. in c. ſollicitudinem, not. 1. ext. de appell.* Frivola † autem hęc dicitur appellatio, 36
1.) quæ gravamen relevans non continet, quæ & eodem ſenſu vana & inanis dicitur, ideoque parum vel nihil attendenda, quia potius appellatorum temeritas coërcenda eſt mulctis & amiſſione cauſæ, qua de re *Marant. de ap-*

*pell.num.*347. (2.) quæ fit ab executione, nam hoc pacto facta appellatio mulctâ 50. librarum argenti coërcetur, *l.ab executione in fine, C. quor. app. non recip. Bald.in l.2.Cod.de Epiſcop audient.* (3.) quæ nihil novi, ſolidi, aut ſpecioſi præ ſe fert, præterquam recocta & in prima inſtantia ventilata & deciſa ſit, non niſi ad dilatandas lites, defatigandam partem & eludendam SS.Juſtitiam, cui malitiæ obviandum eſt, adeò ut judex à quo injuriarum convenire poſſit appellatorem, *gloſſ.in l.fin.C.quand.provoc.non eſt neceſſe etſi.* Etenim diffamatur judex inſtantiæ, quaſi juſtitiam injuſte vel perperam adminiſtraſſet, *Felin. in c.2. de appellat.* (4.) quando appellator in inſtantia prima nihil produxit nec probavit, qui ſuccumbens non prius eſt audiendus, quam refuderit litis ſumptus adverſario, *vide Marant.dict.loc.nu.* 353. hic appellans quippe non judici ſed ſibiipſi imputare debet, cur in cauſa ſuccubuerit, qui gaudere non poteſt beneficio illo, quo ſeſeipſo facto fecit indignum, non deducta deducam, non probata probabo, &c. *c. an ſit de appellat. gloſſ. & Bald. in c.ex parte, ext.de probat.c.bonæ memoriæ clem.1.de elect.l.auxilium,§ fin.ff. de minor 25.annis.Dec.conſil.103.n.1.Bald.in l.3.C.de appellat.& l. præſcriptione,n.25.C.ſi contr. jus vel util.publ.*

37 10. Non appellatur † in cauſa poſſeſſoria ſuſpenſivè nam appellatione factâ nihilominus exequitur judex à quo niſi appellans una reſpectu expenſarum & fructuum perceptorum fuiſſet condemnatus, *Bart. in l.fin. §. juſſus ff.de appellat. Petr. Denaiſ. de jur. Camer.c.*146. vel quia gravamen eſſet adeò vehemens atq; ſic comparatum, quod reparari in petitorio non queat, *Bald.in l.2.ff.de appell. recip.* vel quia prorſus injuſte, inverſo juris ordine poſſeſſio aufferretur appellanti, *Angel conſil.*112. idq; eo magis, quoties conſtat de judicis injuſtitiâ & pravis affectibus contra ſpoliatum, *Bald. conſil.* 217.*in fine lib.2.*

38 11. Appellari † non poteſt in cauſa delati muneris publici, uti tutelæ, curatelæ, &c *l.1.§.ſi quis,ff.quand. appelland.ſit Spec. d. tit. de appellat.§ in quibus,verſ.*7. practica verò eſt, ut gravatus ſubinde ſeſe excuſet petatq; dilationem deliberandi ad 50.dies, ſi elapſo hoc termino is ſeſe excuſaverit, neq; impetraverit remiſſionem, via appellandi jam parata eſt, *l.unum in una. §.tutor, ff.de appellat.§.18. Inſt.de excuſat tutor.textu à contrario ſenſu inducto.* in cæteris muneribus, quæ annexam dignitatem habent, recta appellari poteſt, nec opus ejuſmodi eſt ambagibus, *l.2. C. de decurion. l.1. C de tempor. appell.* quin

39 imo in cauſis contributionum appellatio recipitur, ut ſi antehac immunis † & privilegiatus deſcribitur in libro cenſuali, qui ſi negligit appellare intra decendium à ſolo hoc inſcriptionis actu, renunciare cenſetur privilegio, *Alex. conſil.*101.*vol.*1.*Marant.de appell.n.*325.

40 12. Appellari † non poteſt, quoties appellator renunciaverit huic beneficio in contractibus, *l.fin. C. de temp. appell l.ſi quis libellos,C. de appell. cap.*

cap ſollicitudinem, extr. de appell. renunciantibus enim juribus pro ſeſe introductis, ad ea nullus datur regreſſus, *l ſi quis in conſcribendo, C. de pact. l. 18. ff. de juriſdict. l. 1. ff. ſi quis in jus vocat. &c. cap. ſignificaſti de for. compet. l. 1. §. & poſt operis, ff. de nunc. novi oper.* Etenim conſenſus privatus judicem eum facit, quem partes habere judicem voluerunt, *l. 1. & l. privatorum, Cod. de juriſdict. Gail. 1 obſerv. 40. num. 1. & 2.* quin quod tacite quoque renuncietur ſæpenumero appellationi, ut (1.) ſi pars deſerat appellationem, nec eam decenti modo & ſpacio proſequatur, *Marant. d. loc. num. 341.* (2.) ſi appellatione pendente vel ſaltem interpoſitâ adhuc litigat coram judice à quo *d. c. ſollicitudinem & cap. gratum, de off. deleg.* (3.) ſi appellator attentat poſt appellationem rite factam, *vide Gail. 1. obſ. 146. n. 12.*

13. Tandem non appellatur † à ſententia interlocutoria niſi habeat 41 vim definitivæ, vel aliàs gravamen irrecuperabile præ ſe ferat. Sententiæ verò interlocutoriæ vim definitivarum habentes ſunt.

1. *Sententia de exequendo reſpectu guarentigiæ.*
2. *Quod non ſit procedendum in lite, quia obſtat rei judicatæ exceptio.*
3. *Quod exceptiones peremtoriæ obſtent & probatæ ſint.*
4. *Quod appellatio ſit deſerta.*
5. *Super revocatione attentatorum.*
6. *Quod deveniendum ſit ad 1. vel 2. decretum.*
7. *Quod non ſit compromittenda.*
8. *Ab obſervatione judicii liberatoria vel inſtantia.*
9. *Cur ſe pronunciet judex competentem.*
10. *Super remiſſione cauſæ quoad judicem.*
11. *De relaxatione ad effectum agendi.*
12. *Non eſſe reſpondendum libello tanquam inepto.*
13. *Quando mulcta indicitur ſubditis extrajudicialiter.*
14. *Omnis ſententia poſt definitionem lata, habet vim definitivæ, Gylm. in deciſionib. Camer. pag. 318.*

Cæterùm ſententiæ interlocutoriæ, quæ gravamen irrecuperabile præ ſe ferunt, adeoque appellabiles vulgo dicuntur, ſunt (1.) cum in citationis nulliter factæ puncto reus prægravatur, in contumaciam condemnatus, ut ſiquidẽ ad locum minus tutum fuerit citatus, *l. 2. ubi Baldus C. de appell. recipiend.* (2.) cum rejicitur exceptio incompetentiæ, & judex incompetens ſe competentem pronunciat, *c. ſignificantibus, extr. de off. deleg. Aretin. conſil. 106. & conſil. 106. Bart. in l. ſi quæramus. ff. de teſtam.* (3.) cum cautio injungitur parti onèroſa vel injuſta, vel quoties eadem repudiatur alias ſufficiens & legitima, *Guid. Pap. conſil. 75.* (4.) cum rejiciuntur exceptiones litis ingreſſum impedientes, vel alias oppoſitæ proceſſibus, niſi ex actis earum apparet calumnia, *Bart. in l. ejus, ff. de appellat.* (5.) appellatur à ſententia ſequeſtra-

 tionis

tionis & arreſti, *Angel.conſil.*107. quanquam *Maranta d.loc.nu.* 3 7. (6.) à ſententia ab obſervatione judicii propter ineptitudinem libelli, vel quia actor eſt talis perſona, quæ in judicio ſtandi perſonam juſtam non habet, *Aretin. conſil.*119. *Bart.in l.Titia, ff.de appell.* (7.) à ſententia quæ admittit libellum ineptum, *Guido Pap. deci.*426. *nu* 17. (8.) cum dilatio denegatur, eave nimis anguſta præfigitur, *Gylman. in præjudic. Camer. tom.*2. *Symphor. pag.*320. (9.) Si judex nolit admittere juramentum ſuppletorium, *Vivi. com. opin. quæſt.*91 *lib.*1. (10.) Si judex atteſtationibus publicatis, non admittit defenſiones reorum, vel quod idem actori denegat facultatem probandi, *Bald. in cap.*2. *ut lit.non contr.* (11.) Si denegat audientiam partibus, *cap. interpoſita, ext.de appellat.* (12.) Si copia actorum denegatur parti, *Guid. Pap.d.conſil.* 75. & ut ſupra annotavimus, ſi copia indiciorum reo denegatur (13.) Quemadmodum à ſententia torturæ appellari poteſt, *Aretin. conſil.* 20. qua de re ſupra paſſim & prolixius, (14.) ab iniqua ſententiæ declaratione extenſione vel reſtrictione appellatur, *l. ab executore ubi Dd. ff. quor. appellat. non recip.* (15.) à ſententia qua pars confeſſa ad proceſſum ordinarium & prolixum admittitur, *Aretin. d. conſil.*20. (16.) à ſententia deſerta inferioris judicis, & admiſſa coram ſuperiori, *Bald. in l.præſes, ff quemod & §. quand. judex,* (17.) Appellatur à ſententia ſuper teſtibus admittendis vel non admittendis, *Jaſon. in l.*2.*num.*27.*ff.de leg.*1. (18.) omnis ſententia poſt definitivam eſt appellabilis, *Dd.in d l. ab executore. ff. quor.appell non recip.* (19.) ab impoſitione mulctæ appellatur, *l.*1.*in fine, ff. ſi quis jus dic. ubi Bart.* (20.) Qui renunciavit appellationi, nullitates tamen deducere poteſt, *Gylman. in Symph. d. lo. pag* 39. (21.) ſic quacunque in cauſa à definitiva appellari non poteſt, ab interlocutoriis rectè provocatur, quæ ante definitivam proferuntur, & ratio eſt, quia gravamen earum non reparari poteſt in ſequenti inſtantia, quæ evaneſcet, niſi hoc pacto conſulatur gravato, *Aretin. conſil.* 46. & *conſil.* 188. *Marant. de appell. in Specul. aur. num.* 566. proinde enatum generale hoc brocardicum: Quod omnes leges, quæ appellationem prohibent ſint odioſæ & exorbitantes, adeoq; reſtringendæ, *Andr.de Iſern.in c.*1 *verſ. & bona, &c. col.*10. *quæ ſint regal. in uſib. feud. lib.*2. (22.) Porrò quanquam à decreto primo regulariter non appelletur, *Gylman.d.loc.pag.* 35. cum tamen per immiſſionem jus reale & fructuum perceptionem acquirit actor, appellare poteſt, *Gylman. d. loc. pag.* 105. (23.) appellatio juſta & legitima eſt, ſi victo in poſſeſſorio denegatur cautio in petitorio. *Idem pag.* 34 *d. lo.*

CAPUT

CAPUT XLIX.

DE RELIQVO IVRE APPELLANDI, IN CAVSIS maleficiorum.

SUMMARIA.

1. *Appellatio in Camera non recipiatur, niſi ex capite nullitatis.*

2. *Appellatio non recipitur a ſuperiori, niſi per modum quarelæ.*

3 *Confutantur aliquot argumenta dubia.*

4. *Lex poſterior tollit priorem.*

5. *Qui jus in toto habet, in ſingulis eiuſdem partibus unditam habet intentionem.*

6. *An vera ſit Marantæ ſententia, qui a deſinitiva alicuius materiæ prohibitivæ non poteſt appellare, ne appellare poſſit ab interlocutoriis eiuſdem farinæ.*

7. *A decreto torturæ appellari poteſt.*

8. *Exploditur judicum iniquorum cautela, qua appellationem ad munt reo.*

9. *Plaga divinitus eſt immiſſa, quando imperitiores imperant, ſtulti gubernant prudentiores.*

10. *Amplificatur, quam ſit crudele judicibus indoctis committere cauſas criminales.*

11. *Ordinatio Cameræ eſt ſtricti juris, nec extendenda ad caſus ſimiles, nec trahenda extra curiam, niſi expreſſe id ſit determinatum.*

12. *Differentiæ juris non privatim faciendæ.*

13. *Quomodo in cauſa procedatur, admiſſa nullitatis quæſtione?*

14. *Nullitatis quæſtio non incidenter, ſed principaliter, deduci debet coram Camera.*

15. *Sententia ipſo jure nulla, non indiget reſciſſione, vel appellatione.*

16. *Sententia ipſo jure nulla, requirit miniſterium hominis, qua pro nulla publice declaretur.*

17. *Quid facto opus, quando judex nullitates deprehenderit eſſe commiſſas?*

18. *Quid judex inferior factitabit, nullitatibus apparentibus?*

19. *Non fieri unquam poteſt, ut quod accuſatori idem reo ſit ſuave, decernatur.*

20. *Iudex eſt Dux & Imperator judicii?*

21. *Nullitas incompetentiæ eſt inſanabilis, & poſt tres conformes ſententias, opponi poteſt.*

22. *Periculoſum eſt, in ambiguis abſolutum ferre judicium.*

23 *Referuntur caſus & præjudicia, quo pacto per conſequentiam, cauſæ criminales devolvantur ad Cameram?*

24 *Si ſtatus contendunt de cognitione ſuper delicto, uter eorum ſit competens, reus ſequeſtrari & à tertio quodam magiſtratu puniri debet.*

25. *Quomodo à mulcta poſſit appellari?*

26 *An inhibitio ſit decernenda in hoc paſſu, & materia criminali?*

27. *Cæſar vel Papa, nedum defunctam poſſunt reſuſcitare iniquam.*

28. *Ex fine actus humani ſunt æſtimandi.*

29 *Explicatur regula, quod ab initio vitioſum eſt, &c.*

30. *Quid ſi pendente inhibitione, judex exequatur?*

31. *An in cauſa nullitatis, ab Electore Saxoniæ ad Cameram appelletur?*

32 *In cauſa denegatæ juſtitiæ, omninò appellatur ad Cameram ab Electore Saxoniæ.*

33. *Iudex audientiam denegans & juſtitiam adminiſtrare nolens, doloſe & convenire poteſt criminaliter.*

34. *Omnis generalitas propter medium habile, generaliter operatur.*

35. *Promotoriales quoq; in Camera deducuntur in cauſis criminalibus, denegatæ vel protractæ juſtitiæ?*

36. *An via appellationis, querela denegatæ juſtitiæ, ad Cameram ſit devolvenda?*

37 *Diffe-*

37. Differentiæ novæ non ſunt faciendæ, ubi rationis identitas ſ[illegible] ingit.
38. An reviſio peti poſſit in cauſa criminali?
39. Vitalis introducendæ appellationis perinde ſeſe habet uti in civilibus.
40. Appellationes cauſarum criminalium uſitatæ & receptæ ſunt ab antiquis [illegible] in curia majori.

1 CÆterum quò certum quid ſtatuatur in præſentiarum. Maxima hæc juris eſto: Quod uti in criminalibus, ſic in cauſis indiciorum appellatio non recipiatur (1.) niſi ex capite nullitatis principaliter deductæ (2.) & per
2 † modum querelæ vel ſupplicationis propoſitæ, *Boſſ de quær. contra ſententiam pag. mihi 505. Frid. Mindan. de proceſſ lib. 1. cap. 9. num. 5 ibi: ſupplicare appellando, &c.* cauſas verò hic ſubintelligo criminales quæ pœnam ſanguinis ingerunt, vel utplurimum ultimum ſupplicium minitantur, *Idem Mindan. d. loc. num. 8. Bart. in l. 1. §. 1. ff. ſi quis teſt. lib. juſſ. Clar. in pr. crim quæſt. 84. Ludov. Bender. in tract. de reviſ. concluſ. 33. extat hac de re Ordinat. Cameræ part. 2 tit. 28. in §. incipit.* Item/ nachdem auch dem alten herbrachten Gebrauch im Heiligen Röm. Reich zuwieder daß in Peinlichen Sachen Appellation zugelaſſen werden ſollen/ ordnen vnd wollen wir/ daß hinfürther in Peinlichen Sachen/ die Leibſtraff auff jhnen tragen/ am Keyſerlichen Kammergericht kein Appellation angenommen/ ſondern angeregtem Gebrauch nach gehalten werde. Doch da ſich jemand an dem Kammergericht beklagen würde/ daß in Peinlichen Sachen/ auch Leibſtraff belangende/ ſein vnerfordert/ vnd verhört/ vnnd alſo nichtiglich oder ſonſt wider natürliche Vernunfft vnd Billichkeit wider jhn procedirt, gehandelt vnd geurtheilt/ vnd derhalben principaliter auff die nullitet vmb Proceß anſuchen würde/ ſo fern dann der Richter/ deß Handlung ſich die Parthey obberürter maſſen beklagt/ dem Kammerrichter ohn Mittel vnterworffen/ ſoll alßdann der anſuchenden Partheyen ſolcher Nichtigkeit halben Ladung erkandt/ vnd darauff rechtliche Hülff mitgetheilt: Vnd ſo ſich in Führung der Sachen befunden/ daß obberürter maſſen/ nichtiglich gehandelt vnnd geurtheilet/ alßdann die Hauptſach wider an die ordenliche Obrigkeit formblich vnd rechtmeſſiglich daran zuhandeln/ zu Procediren vnd zuvrtheiln/ remittirt werden/ *tit. 28. part. 2. fol. 149. & ſeq.* In criminalibus nullæ admittantur appellationes, *adde receſſ. Auguſtan. de Anno 1530. in §.* Item alß etliche zeither von Peinlichen Sachen vielfaltig an vnſer Keyſerlich Kammergericht appellirt, auch dieſelben Appellation angenommen/ darauff Proceß erkant/ vnd rechtlich gehandelt worden/ vnd ſolches dem alten herbrachten Gebrauch im Heiligen Röm. Reich zuwieder: So ſetzen vnd ordnen wir/ daß hinfürter in Peinlichen Sachen/ kein Appellation angenommen/ ſondern damit nach altem herg ebrachten Gebrauch gehalten werden ſoll.

3 Neq; † hic obſtat, *l. 1. l. 14. l. 20. l. 29. C de app. l. 2. C. quor. appell. non recip. l. 2. C. ſi pend. appell. l. 7. Cod. de Epiſc. aud. l. 6. ff. de appell. l. 15. ff. de appell. l. ſi [illegible] 10. §. hi autem omnes, ff. de injuſt. rupt. l. qui a latronibus, § fin. ff. de teſt. Gome[illegible]*

var.

var. reſol. cap. [illegible] *Imola in* [illegible] *§. jam* [illegible] *n.* [illegible] *ff. de appell. Rebuff. in tract. de ſupplic. quæſt.* 9. *caſ.* 3. [illegible] *de* [illegible] *C*[illegible] *in* [illegible] *ſiv. quæſt.* 94. ubi paſſim dicitur non repudiand[illegible] ſed recip[illegible] velle appellationes in cauſis criminalibus. Reſpondeo, jure ſic conſtitut[illegible] fuiſſe dero[illegible] [illegible] lege in contrarium promulgatâ, atq; ob inſignem Reipublicæ uſum & commodum, uſu rec[illegible] neq; enim ambigi poteſt, quia † lex prior tolli poſſit lege poſtea lata, *§. ſed naturalia. Inſt. de* 4
jur. nat. gent. & civ. l. 4. *ff. de Conſt. princ.* [illegible] quod invicem appellationis quærela, imo appellatio ipſa recipiatur in cauſis & caſibus hod[illegible] [illegible] conſuetudine expreſſis & [illegible], *Ord.* [illegible] *Camer. p.* 2. *tit.* 2[illegible] [illegible] *Gail. B*[illegible] *& Mindan. d. loc. Gail.* [illegible] *obſ.* [illegible] *num.* [illegible] *1. de pp. cap.* 2[illegible]. *Myſing. cent.* 4. *obſerv.* 49. Exin[illegible] [illegible] ab in[illegible] [illegible] [illegible]mus, ut quicquid in genere hoc modo con[illegible] ſit de [illegible], id merito in materia judiciorum, quæ pars criminalium eſt, [illegible] [illegible] debere. Quicquid enim juris eſt in toto, idem eſt in ſingulis ejuſdem partibus, *l. quæ de tota in princ. ubi gl.* & *Bart.* [illegible] *l.* [illegible] *tr*[illegible] *in p*[illegible] *ff. de ad.* [illegible] hinc dicimus vulgariter: Quod † habet [illegible] vel [illegible], quoque habeat [illegible] in qualibet ejus parte, *c.* [illegible] *um Epiſcopus de* [illegible] *in* 6. Quia à toto generali procedit argumentum affirmative ad diſcendam ſuam ſpeciem, vel poſitive vel privative, *Eberhard.* [illegible] *num.* 1[illegible] *l.* [illegible] *ff. de V. S. num.* 4. *& ſeqq.* P[illegible] [illegible] [illegible] foret: Quod [illegible] [illegible] tum extat, altera vi[illegible] [illegible] vel pe[illegible] tum tolerare, [illegible] erat interdictum *l.* [illegible] *Zaſ.* & *D.* [illegible] *ff. de* [illegible] quibus præſuppoſitis [illegible] practica † *Maranta de appellationum* [illegible]. adſerentis, quod quoties [illegible] nitiva non poſſit appellari, ab interlocutoriis appellatio recipiatur, quæ ante definitivam proſequitur. Cum vero utrobique eadem [illegible] ratio & juris diſpoſitio, conſequens eſt in cauſis judiciorum non niſi ex capite nullitatis appellari poſſe. Quapropter à decreto torturæ provocatione factâ, æquè nullitas deduci poteſt principaliter, quam ſi † ante hoc decretum interlocutoria fuiſſe publicata, quæ reum prægravaret propter nullitates commiſſas, [illegible] non immerito ipſa Camera [illegible] decreverit in cauſa quadam [illegible] [illegible], ne torqueretur mulier ſine legitimis indiciis præcedentibus, [illegible] [illegible] ter probatis, uti refert *Gylmann. tom.* 2. *ſymphor. in deciſ. Camer. pag.* [illegible]. Exploditur † itaque practic[illegible] judicum callidiorum, qui [illegible] prius ſententiam de torquendo reo d[illegible], quam in locum tortur[illegible] [illegible] & jam ope & conſilio humano prorſus deſtituto, quoniam conſuetudo non permittat advocatos vel defenſores admitti [illegible] ad actus torturæ, [illegible] *Clar.* [illegible] *quæſt.* 64. Deplorandum autem eſt cauſas criminales utplurimum hoc [illegible] lo in ſubſelliis quaſi ventilari & ab imperitioribus illis, qui [illegible] præpoſiti ſunt & facti præfecti, decidi, qui nonnunquam [illegible] ſuperiori judicio, vel conſilia exquirunt [illegible], [illegible]

tiæ turgidi intermittunt conſulere alios, & ſine decenti inquiſitione & indi-ciorum probatione ad torturam properant cum reis, præſertum [illegible] tis & conditionis. Huic profectò infantiæ & crudelitati connivendum ne-quaquam erit, ne qui ſuperior gratia magis, quam officio hoc [illegible] pro-moverit, audire tandem cogatur divinam illam vocem, redde rationem villi-cationis tuæ, qui opponere illud non poterit, ſe ſuorum judicum [illegible] rum religionem ac fidem fuiſſe ſecutum, *Bodin. 4. de rep. cap. 6. in [illegible]* Du-bium ergo non eſt, quin curia Principis ſuprema, prona eſſe debeat [illegible] recipere appellationes a præfectis ejuſmodi factas, melius factura, [illegible] totum aut [illegible] proceſſum criminalem ad curiam revocaverit, [illegible] rum præfectis cuſtodiâ & captura commiſſa, cum ignorantia judicis [illegible]
9 rumque calamitas innocentis, *Auguſt. de Civit. Dei lib. [illegible] cap. [illegible]* [illegible]
mortalium crediderit plagam eſſe divinitus [illegible], ubi [illegible] pruden-tiam, mendacium veritatem, tenebras lucem dixeris, [illegible] prudentiori-bus dominari, & quorum revera [illegible] eſt conditio [illegible] cipû ſint, qui ſunt in receſſu ſtipites ſtatuæ & [illegible]
10 videris. *Joan. de Pined. in Job cap 20.* [illegible] *n. 1.* [illegible] nè ignorantia [illegible] & pe-riculoſior eſt ipſa malitia, quia malitioſus [illegible] bene & [illegible] ter, ignorans nunquam, *[illegible]* [illegible] ces ignorantes fratres [illegible] appellentur. *ſingul.* [illegible] lum, habent ſub cappa, [illegible] ait eſſe [illegible] debeat & *Anima* [illegible] rum, [illegible] qui [illegible] ſtitiæ, [illegible] ver & [illegible] ſtitiæ [illegible] Principum qui etiam [illegible] cipaliter [illegible] figura humana, vide *[illegible]* *Aug. [illegible] de lib. arbitr. cap. 25.*

Judicis officium [illegible] tuum,
[illegible] docto regitur [illegible] ſapientia [illegible]

[illegible] pag. [illegible] [illegible] haud imprudentee [illegible] Hen[illegible] Dn [illegible] [illegible]

[illegible] Google

in Italia [illegible] causæ criminales [illegible] diebus dominicis & feriatis propter gravitatem & execrationem, quam præ ſe ferri putabatur, publicè vē [illegible] prælectæ, diſpenſatæ, & [illegible] propoſitæ fuerint, uti *Eberhard. à Weihe [illegible] & Polit. [illegible] ſuper [illegible] referebat.* Sed omiſſis ambagibus, exiſtimarem quoad judicia [illegible] & inferiora non prorſus abrogata jura priſca de recipiendis appellationibus cauſarum criminalium. Supra paſſim citata. Neque obſtat, quod Ordinatio Cameræ ſit inſtar legis univerſalis, ut quod Cameræ nunquam [illegible] fuerit à Cæſare & Statibus Imperii correctum, ſuffragiis publicis [illegible] privato auſu mutandum, *arg. l. præcipimus, Cod. de appellat.*

Reſpondeo 1. Quod † Ordinatio Cameræ ſit omnino ſtricti juris, nec ad 11
caſus ſimiles extendenda, [illegible] trahenda niſi in caſibus expreſſis & determinatis, [illegible]toria enim & exorbitantia non ſunt ad conſequentias transferenda, *c. quæ à jure 28 de R. J. in 6. l. 3 [illegible] de [illegible]* imò proviſio legis novæ non eſt ultra illud, quod in ea exprimitur, [illegible] *l. 1. §. plane, ff. de conſtit. princ. l. 61. §. de [illegible] [illegible] Eberhard. in top. [illegible] amp. ad exten. ipſ. leg.* At ordinatio nihil diſponit quoad ſubſellia inferiora. Ergo [illegible] enim † differentiæ ſunt [illegible] faciendæ, ubi lex ſuperioris generaliter aliquid diſponit, *Supra [illegible] 35. num. [illegible] vide Aed. Knich. de Saxo. non prov. [illegible] n. 14 [illegible]*. Quod appellatio omnis [illegible] permiſſa, niſi prohibita cenſeatur, *[illegible] 3 [illegible] de appel. [illegible] n. 4. Cod. de judic. [illegible] 1. num. [illegible]* Quemadmodum [illegible] in reliquis prohibitoriis [illegible], quam [illegible] quicquid prohibitum non reperitur permiſſum cenſetur, ita etiam in appellatione ſtatuendum eſt, *Crav. etc. conſil. 203 n. 23. tom. 2. Knichen. d. [illegible] num. 132.* 12

Reſpondeo 2. Quod ratio diverſitatis evidens hîc occurrit, quæ in eo conſiſtit, uti diximus, ne inſcitia imperitorum occidantur innocentes, cum ſatius ſit nocentem abſolvere, quam innocentem [illegible] per [illegible] juris biocolyticum. Hæc cauſa eſt cur [illegible] admittendam [illegible] appellationē ejuſmodi, quæ ſpecialiter interdicta non apparet in d. ordinat. Camerali neque allegato receſſu Imperiali Auguſtano, de Anno 15[illegible] [illegible] vero non [illegible] poteſt nec debet de curiis Principum Germaniæ ampliſſimis & viris doctiſſimis, paſſim inſtructis.

Ut [illegible] ratio non alia, eaq; πρέπα [illegible] ſuſſerit appellationes criminales in Camera non recipiendas, [illegible] pene proceſſibus illis [illegible] miſſis vel perpetuo [illegible] carceris [illegible] locarentur tam inſontes, quam ſontes, nec præſidio proceſſuū Cameralium exſultarent rei criminis, ac tandem delicta manerent impunita, [illegible] ſcandala immenſa & infinita procul dubio eſſent naſcitura, hinc eſt quod [illegible] per [illegible] devolvitur [illegible] cauſa criminalis ad Cameram, Camera [illegible] & [illegible] inſpectio [illegible]

rem actorum, quæ notorium inducunt, *c. ſi* [illegible] *de c*[illegible]*b* [illegible] cum [illegible] pro re nata remittere acta teneatur judici a [illegible] & malitioſe extrahatur, quod permittendum non eſt, *l. quemam*, [illegible] *& l. cum reus, C. de pœn. l. ſi quis, ff eod.*

Hîce ſic expeditis dicendi locus ſuperest, quomodo & [illegible] nales cauſæ ad Cameram devolvantur. Devolvuntur autem [illegible] uti ſupra admonuimus ad Cameram non niſi ratione nullitatis [illegible] *mer part* [illegible] *tit. 28. rece*[illegible] *Imp.* [illegible] *§ item* [illegible] *cap. 1 num 28. Mindan. de proceſſ. lib. 1. c. 9 num.* [illegible] *tom* [illegible] *phor. in d*[illegible] *Camer. pag.* [illegible] *pag. 113. & 375. item pag.* [illegible] *pag. 258. & 321. And. Kn*[illegible]*nen de Sax. non pr*[illegible] *c. 2. per tot.* [illegible]
14 *14. obſerv. 18. Myſing. cent. 4 obſerv. 42* [illegible] nullitatis [illegible] den[illegible] principaliter debet deduci & conſeſſim [illegible] *Mindan.* [illegible] *nu. 4* ibi: admittitur c[illegible]ſis primo apertæ & principaliter [illegible] nullitatis, &c. Nullitas vero deduci demum dicitur [illegible] in ſupplicatione pro proceſſibus extrahendis proponitur [illegible] tentiam eſſe nullam, una atque [illegible] *de* [illegible] *pag.* [illegible] non [illegible] nullitas appellationis [illegible] none. *Myſing. 5. obſerv.* [illegible] Sed nullus [illegible] cipiatur cauſa criminalis in Camera, quorſum itaque [illegible] appellatione. Quapropter *Marant. de appell. num.* [illegible]
15 eſſe appellationem, ſi quidem [illegible] ſententia ipſo jure [illegible] *provo*[illegible] non eſt neceſſe in ſpecie, [illegible] *l.* [illegible] tur ſententia, ut ait *text. l. 4.* ad quid ergo ſententiæ [illegible] *Mindan. d.* [illegible]

Reſpondeo ad 1. & diſtinguo inter modum & rem ipſam, quæ [illegible] te laboratur, modus devolvendi nullitatem ad Cameram [illegible] lationis, materia devolvenda [illegible] quæ [illegible] modum [illegible] [illegible]

16 Ad 2. Reſpondeo [illegible]

17 [illegible]

mera, ſed remitti eandem ad judicem à quo, cui [illegible] ſerioſum commiſſione [illegible] & nonnunquam mandatis injungitur, ut nullitates commiſſas corrigat, procedatque in cauſa ſecundum jus commune & Imperii Conſtitutiones, *vide Gail d.obſerv. [illegible] lib 1. [illegible] & 1. obſerv.42.* Quapropter [illegible] feudatus vel captivatus reus [illegible] judicii tacite abſolvitur, donec de integro vel de novo agatur remotis nullitatibus, *Idem Gail. d. obſerv. 1. & d. obſerv.42.num. [illegible]* ubi [illegible] in cauſa civili ob inſignes nullitates partibus injungitur de novo [illegible] atque hoc reſpectu ad juris communis regulas [illegible] criminali reducitur [illegible] placuit quod cauſa nullitatis per modum querelæ [illegible] poſſit coram ordinario [illegible] eodem judice, ſcilicet qui poteſt cognoſcere de ſua nullitate *[illegible] abſente, C. de accuſ. l. ſicut propon. [illegible] l. ſi præſes, Cod. quom. & quand. judex &c. Ægid. Boſſ. in tr. tit. crim. in tit. de querel. contr. ſentent. num. 7. pag. mihi [illegible]*. neque hic obſtat ſententia Mindani exiſtimantis petendum eſſe à judice ut reſcindat ſententiam nullam judex à quo, &c. Reſp. multa peti, quæ impetrari non [illegible] illud iniquum petas ut æquum feras; neq; † enim fieri poteſt ut idem quod & accuſatori 19 & reo ſuave eſt, [illegible] *Ritz. [illegible] Lithan dec. [illegible] nu. [illegible]9.* quinimò cauſæ remiſſio [illegible] ab obſervatione judicii facta declaratio ut tandem partes coram judice à quo de integro procedere cogantur, nihil præterquam reſciſſionem præſefert & infert, ut itaque hic nulla occurrat contradictio. Ne vero in infinitum extrahantur proceſſus criminales in puncto hoc remiſſionis, præſtat ut quæ ad [illegible] cauſæ ſpectant eaque liquido [illegible] apparent modo formæ & modus procedendi ſit corruptis, temere ne violentur, reſcindantur, utile enim per inutile non debet viciari, quoties commodè alterutrum poſſunt ſeparari utile & inutile, *Dd. in c. utile, de R. J. in 6.*

Porrò quid ſi nullitas incõpetentiæ allegaretur coram Camera [illegible] præjudicia hac de referr, *Mindan. d. loc. num. 8.* quia nullitas inſanabilis eſt & prorſus non toleranda, adeò ut acta omnia coram incompetenti [illegible], evacuarentur *l. 1. § hæc autem ff. quod quiſq. jur. l. 1. & ibi Bart. C. de ped. [illegible] tot. tit. C. ſi à non compet. jud.* judex enim [illegible] eſt judicii ut ſublato hoc fundamento omne id corruat, quicquid in [illegible] ſuperſtructum, *Bald. ad rub. C. ſi à non compet. jud.* ubi † quoque judicem [illegible] & Imperatorem [illegible] judicii, &c. neq. † enim judicatum dici poteſt ab illo, qui jus dicendi poteſtatem non habuit, *l. 1. §. fin. ff. ad Tertull. l. 2. § [illegible] ff. de [illegible]* nullitas ejuſmodi opponi poteſt poſt tres ſententias conformes, *Alex. [illegible] Myns. [illegible] cent. 6 obſerv. 4. Gail 1. obſ. 42. [illegible] Mindan d. loc. num. [illegible] de null. ex defect. juriſd.* Reſpond. quamvis [illegible] incompetentiæ [illegible] Imperii ſtatus laboratur in Camera [illegible] decidendam [illegible] *Mindan. d. loc.* Sed ubi manet cauſa princi[illegible] judice [illegible] reſcindatur cauſa, decidit quidem ille ad Cameram ſpectare [illegible]

de crimine qui cum *Vantio* inquit Camera [illegible]
& in qui omnis poteſtis fluit & refluit [illegible]
rem præſentem examinando, quæro [illegible]
ſit, præter [illegible] puncto remiſſionis, cauſis deciſione [illegible]
nos præſcribere quicquam foret [illegible], ergo [illegible]
22 ſum † quippe in ambiguis [illegible] judicium [illegible]
poſſit offendi, *cap. fin. diſtinct.* [illegible] *Matth. de* [illegible] *in deciſ. Neap.* [illegible]
num. 29.

Nihil hic de aliis dicam cauſis rerum criminalium [illegible]
quæ ita ſeparantur à materia criminali, ut quæſtio ad Cameram [illegible]
[illegible] coram ſuperiori, cauſa mere [illegible] relinquatur [illegible]
23 cardin[illegible] † Sic reſtitutio cadaveris ex cauſa pignorationis ad Cameram per-
tinet, *Gylman. in d[illegible]. deciſ. pag.* 258 Sic in cauſis [illegible]
diti, quæ cauſa ſimiliter pignorationis eſt, [illegible]
decreto, *Mindan. d. loc. n.* [illegible] que eſt quod *Idem Gylman.* [illegible]
pter me[illegible]m imperium litigioſum, unde fors [illegible]
mittere Cameram ex conſideratione pignorationis [illegible]
cens ſiſtitur & arreſtis [illegible] propter maleficium [illegible]
Cameræ proceſſus [illegible], *Mindan.* [illegible] Sic in [illegible]
ipſius fiſcus Cameræ ſeſe intromittit reſpectu ſui intereſſe, [illegible]
tionem bonorum, aliisque in cauſis Fiſcalibus quæ ad Cameram [illegible]
Gylman. d. loc. pag. [illegible] Sic in cauſis criminalibus [illegible]
ſub pœna banni, *Idem Gylman. d. loc. pag.* [illegible]
[illegible] poteſt ſine [illegible] in cauſa maleficii [illegible]
[illegible] is ſit criminis. *Idem pag.* [illegible] Denique ſeſe intromittit
24 Camera † quoties ſtatus bini contendunt de juriſdictione [illegible]
cauſa maleficii [illegible] alterutrius, pro conſervando [illegible]
& imperio, ne autem reus in cuſtodia interea [illegible]
[illegible], hac occaſione emergente [illegible]
[illegible], qui de cauſa cognoſcat & [illegible]
25 [illegible] *pag.* [illegible]. An † à [illegible]
[illegible] decidi, Quod [illegible]
[illegible] vel dimetatis privatam [illegible]
[illegible] *Cam. appell.* *Myn ſing. obſ.* [illegible]
[illegible] appellationis, [illegible]
[illegible]
[illegible] criminalibus [illegible]
[illegible]
[illegible]

[illegible] in cauſa criminali [illegible]

C[illegible]

[illegible] Google

Camerarum, *vide Gylman d. loc. pag. 17.* Sic renuncians appellationi [illegible] cauſam deducere poteſt [illegible] Camera, *Idem p. 39.* [illegible] ſi quoque ſupplicationi renunciaverit, *Idem d. loc.* modo ne fraus habeat [illegible], *Franc. Poll.* [illegible] *Rom. l. 5.* [illegible], videmus [illegible] quo [illegible]-fugas & jure-moras [illegible] plerumque ad appellationes recurrant, tanquam ad ſacram anchoram, non tam ſpe victoriæ quam ut ſolutionem aut judicatum facere diffugiant, quibus profectò connivendum non eſt, ſunt quidam etiam adeo obſtinatè & præfractè pervicaces litigatores, ut vinci nolint nec poſſint, quibus ſi liceret ab ipſo Rhadamanto appellarent, interea

Res tamen atteritur longo ſufflamine litis,

Dum illi dolos nectunt, moras concinnant, ſubterfugia & diverticula captant. Atque cum in eadem cauſa ſæpius ac ſæpius poſſint appellare, magnus abit annus Platonicus: Ita coguntur partes fractæ potiùs quam victæ, litis atque moræ tædio, aut potius pecuniarum, quarum [illegible] tis inopia laborantes, litem deſerere aut paciſci cum talibus nebulonibus (utor [illegible] verbis Pol[illegible]) formalibus, magno fortunarum [illegible] & vitæ diſpendio. Nam quis hujuſmodi ærumnas, aut moleſtias quas litigator devorare cogitur magno non æſtimat? Adeo miſera eſt conditio, ut interdum, imò ſæpius, majus compendium reportet, ſi omnia computentur, qui tempeſtive liti ceſſit & juri, quam [illegible] potiretur victoria, [illegible] animi & corporis anxietatibus parta. Quod [illegible] notat [illegible] *Martialis lib.* [illegible] *in Gargilianum.*

Lis te bis decimæ numerantem [illegible]
Conterit [illegible] Gargiliane [illegible]
Ah miſer & demens [illegible] litigat annis
Quiſquam, cui [illegible] Gargiliane [illegible]

Quibus obviam iretur, ſi tertiò appellantes [illegible] admitterentur, vel ſi poſt primam ſententiam, quando nec [illegible] temeritas appellationis deterret, damnati cogerentur judicatum ſolvere, [illegible] ſaltem præſtita idonea cautione à victore reſtituturum ſe, ſi in appellationis cauſa ſuccubuerit, isq; tandem claſſicum & triumphum caneret, qui duas ſententias pro ſe haberet.

Sed ad rem redeo: diximus ſuperius pro extrahendis proceſſibus in cauſa criminali vice appellationis [illegible] querelam introducendam, nec mentionem faciendam eſſe appellationis (2.) multo minus ſi a mulctis vel alio quopiam [illegible], referendam, quod in prima inſtantia criminaliter fuerit actum, &c. Jam quæro, † utrumne inhibitio ſit quoque decernenda in hiſce [illegible] cauſarum criminalium? Sanè uti appellatio ſine inhibitione eſt quaſi campana ſine piſtillo, quadriga ſine equis, ita prodeſſe parum conſtat appellationis remedium, niſi inhibeatur judici à quo, *Gail. 1. obſerv. 144. & ſeqq.* quæ ſententia in criminalibus magis magisque ſtringit, ubi periculum [illegible] damnum [illegible] irreparabile & inæſtimabile

prædo-

prædominatur, *Dd in l. liber homo, ff ad L. Aquil.* [illegible] lius foret fructus vel n[illegible], [illegible] mi[illegible] executioni [illegible] in civilibus quidem [illegible] tentia vel executione expedita, in criminalibus [illegible]
27 mnia ſolvat, nec ipſe Papa † vel Cæſar defunctum [illegible] ſcitare.

Sed inſtas, quomodo decernatur hic [illegible], cum [illegible] p[illegible] transferatur ad Cameram, *Mindan.* [illegible] ver[illegible] ſupplicatio non parit [illegible] per [illegible] [illegible] & ſtylo Camerali eſſe conſtitutum, ut [illegible] in effectu producerét id quod cauſa ſuſpe[illegible] cunque enim vertamus rem & cauſam, re[illegible] in idem [illegible] appellatio ſit qua introducimus vel devolvimus [illegible] rem id aſſequitur provocator, quod [illegible]
28 [illegible] hinc eſt quod vulgò dicimus: & actus † humanos [illegible] eſſe dimenſuranda [illegible], *l. inuria,* [illegible] *lib. 1.* juxta finem [illegible] *Cra*[illegible] qui [illegible] *genio,* [illegible] *de aur. & arg.* [illegible] *fil. matr.* neque [illegible] [illegible] *de ſerv. ruſt præd. or.* [illegible] *de* [illegible] *commiſſ.* [illegible] *C.* [illegible] Reſp. diſtinguendum eſſe inter media [illegible] actus [illegible] in productione ſui, vel [illegible] cum ſuſpenſionem, media ad finem [illegible]
29 [illegible] ſic diſtinguentem [illegible] *g. de* [illegible] *n.* [illegible] cui rem invalidam & quodammodo [illegible] cius, degenerantem poſthac in objectum [illegible] illam non juxta principium [illegible] b[illegible] & naturam [illegible] a ſuo principio vel fine. [illegible] Quod [illegible] *l. 2* [illegible] *R. J.* vel quod [illegible]

[illegible]

commun[illegible] idipſum [illegible] eſſe conſtat. De Magn[illegible] ſcribam. Conſiderandum eſt, quo[illegible] privilegio Electores Imperii [illegible] nibus appellationis [illegible] non [illegible], quo cumprimis vigore Conſt. Aureæ Bullæ [illegible] Saxo & Brandeburgicus, reliqui ſi voluiſſent Electores [illegible] de hoc privilegio [illegible] uti [illegible] potuiſſent, quod per uſum contrarium perdiderunt, niſi quod [illegible] & limitata [illegible] eorum curiis ad Cameram appellationes procedant, vide *An[illegible] Knich[illegible] commment. de Saxon. non prov. jur.* antiquitus, ut conſtat, ne[illegible] ab [illegible] Cæſaris appellare licuit, qui minores fuerunt Electoribus [illegible] qua de re *T[illegible] lib.* 12 eodem anno, inquit, ſæpius [illegible] vox principis, parum [illegible] rerum habendam a procuratoribus ſuis judicatorum, [illegible], ac ne fortuitò prolapſus videretur, ſenatus quoq, conſulto, [illegible] quam in ea, & uberius. Nam Divus Auguſtus apud Equeſtres, qui Ægypto præſiderent [illegible], decretaque eorum perinde haberi juſſerat ac ſi Magiſtratus Romani conſtituiſſent, mox alias per provincias, & in urbe [illegible], quæ olim prætoribus [illegible] noſcebantur. Claudius omne jus tradidit, de quo toties [illegible] armis certatum, cum [illegible] ordo [illegible] rogationibus in poſſeſſione judiciorum locaretur *Franciſ. Po[illegible]er. in hiſtor. for. Rom. 5. cap. 17.* [illegible] procuratores æquipara[illegible] provinciarum præſidentis, ubi [illegible] Reſtitutem [illegible] Procuratorem Cæſaris appellat [illegible], [illegible] Reipublicæ forma modo a prætoribus ad præfectum urbis & [illegible] limitibus Imperatore Probo id conſtituente, ut refert *Vopiſcus in vita ejus*, ad Collegium P. [illegible] provocatum, excepto [illegible] urbano, de quo omninò appellari non potuit, *l. unic. ff. de off. præf. urb.* & præfecto prætorio, *l. 1. ff. de appell.* quibus hodie a quam Electores quoad dignitates, communis civiliſtarum ſchola ait, *Knich. d. loc.* ſupplicari tamen [illegible] hujuſmodi præfectis potuiſſe extra dubium eſt, *l. unic. Cod. de ſent. præf. prætor.* uti hodie ſimiliter ab Electoribus indiſtinctè provocari poteſt ex cauſa nullitatis, *Knichen. d. loc. num.* [illegible]. Electores autem Saxoniæ & Brandeburgicus non ſolum ſecundum Auream Bullam, quæ merum & nudum privilegium non appellandi permittit, non ſecus ac olim Præfecto prætorio competiit, reliqua enim remedia, ut ſupplicandi, revidendi, reducendi, & dicendi de nullitate, [illegible] prohibita ſunt, [illegible], vide *Gylman. d. lib. 3. [illegible] Camer. pag. 274.* ubi evincit, quomodo † in cauſa nullitatis ab Electore Saxoniæ 31 ad Cameram appelletur. Pari ratione & modo † ex capite denegatæ juſtitiæ 32 querela ab his, qui non provocandi privilegia habent, in Camera recipitur *Conſt. aur. bull. tit. 11.* quæ regula [illegible] in omnibus privilegiis [illegible], uti in præſentiarum, *Schrader. de feud. [illegible] ſect. 4. numer.* [illegible] judicibus adminiſtrandi [illegible] juſtitiam, ut loquitur *Knichen. d. loc. num.* 48. qui judex † enim juſtitiam adminiſtrare vel [illegible] [illegible] 33

[illegible]

[illegible] qui & inde communiter [illegible] 40. *cent.* [illegible] Succedunt [illegible] ſpectantes regulæ [illegible] faciat, teneatur [illegible] *Bald. num* [illegible] *Parn* [illegible] Quod ſi [illegible] *l. eum qui, Cod.* [illegible] propter [illegible] privatus eſt.

Porro quod parti litiganti & [illegible] *cent.* [illegible] *num* [illegible] hæc quarela [illegible] in cauſis criminalibus [illegible] *Boſſ. de querel.* [illegible] Eſt quippe querela [illegible] prehendens [illegible] *conſil.* [illegible] *vol.* [illegible] 65. *Aretin. conſil.* 5. Quapropter [illegible] & [illegible] cauſis [illegible] quo civiles, ad Cameram deduci fas eſt, [illegible] *Ordin. Camer.* [illegible]

34 cum generalibus † propter [illegible] beat [illegible] *in top.* [illegible] *loc. à generali* [illegible] [illegible] *L. Ebe* [illegible] *rhard. in topic. in loc.* [illegible], *num.* [illegible]

35 [illegible] promotoriales † quoque [illegible] quo [illegible] mandati [illegible] Fiſcale Cameræ [illegible]

36 [illegible] *pag.* [illegible] Et quanquam † [illegible] pellatorum [illegible] quarela hæc ad Cameram [illegible] modi querela [illegible] Camerę [illegible] [illegible] *Camer.* [illegible]

Gail. d. loc. num. [illegible] autem [illegible], ad obtinendos proceſſus, neceſ-
ſariam eſſe [illegible] appellatoris, [illegible] à quo,
ter [illegible] *argum.* [illegible] *de milit.* [illegible] *qui con-*
tumax [illegible] *Gail. dict. loc. num. 6* [illegible]
regulariter [illegible], niſi probetur legitima requiſi-
tio, *l.* [illegible] *off.* [illegible] *in fine, Cod. de*
collat. feud. Petr. [illegible] *C.* [illegible] non refragan-
tur argumenta [illegible]. Ad [illegible] enim reſpondeo, ad Cameram de-
[illegible] demonſtravi-
mus [illegible] appellatoris, ordi-
[illegible] appellationis recipien-
das [illegible] hac
agendi [illegible] querelæ [illegible] ſtylo [illegible] ſug-
gerente, *Mynſ.* [illegible] *cap.* [illegible] *num.* [illegible] cum nulla
hic dari poſſit diverſitatis ratio. [illegible] † [illegible] non ſunt 17
ſunt, ubi rationis identitas [illegible] intellectus in-
[illegible] eſt, [illegible] ubi habent [illegible], *Frman.* [illegible]
[illegible]

Ceterum, an [illegible] † [illegible] poſſit in cauſis [illegible] Camera 18
[illegible]
[illegible]
reviſionem [illegible]
quaquam vero criminales [illegible]
[illegible] & [illegible] in Ca-
mera [illegible] terminos
ingreſſi non [illegible] *argum.* [illegible]
primus, Cod. de appellat. Mynſ. [illegible] *num.* [illegible] Hinc enim [illegible]
Concilii [illegible] ordi-
[illegible] in Camera [illegible]
de [illegible] Palatinus &
Mauritius Haſſiæ Landgravius, Fridericus Saxoniæ Dux [illegible] Ad
[illegible] Elector [illegible] in Came-
[illegible]. [illegible] loco [illegible] eſt, [illegible] appellationis 19
[illegible] in criminalibus [illegible] perinde
ſole [illegible] *arg.* [illegible] *C. de appellat.* [illegible]
criminales extendit, [illegible] *ori Ram.* [illegible]
[illegible] Quamquam antiquioribus [illegible] & nonnunquam triduum appella-
retur, *l.* [illegible] *§. biduum ff. quand. appell. l.* [illegible] *Cod. de appellat.* [illegible]
autem omnium appellatio criminalis [illegible] ab
Horatio, qui ſororem interfecerat, [illegible]

 [illegible]

ma petita à Machete, quem criminis accuſa[illegible] Philippus Macedoniæ Rex dormitabundus, qui quidem [illegible] pudore [illegible] ſcidit, ſed mulctam criminalem [illegible] quam Machetes [illegible]
40 perſolvit, *Valer. Max. lib 6 c. 2.* Porrò appellationes † [illegible] tiſſimas fuiſſe antiquitati cõſtat Plutarch in vita Cæ[illegible] cum cauſam diceret in Macedonia [illegible] Græcis Marco Luc[illegible] tore, ad Tribunos provocaſſe Romam. Sic Lucius Scipio [illegible] banos provocavit. [illegible] *in Cantor. Cenſor.* in urbe appellabant [illegible] Tribunos, *Tacit. 14. annal. Liv. lib. 2. & 4.* qui nonnunquam [illegible] tercedente reum liberabant à pœna mortis, *Liv. dict. loc.* aliquando [illegible] cta criminales cauſæ ad Tribunos tranſi[illegible] Malignus [illegible] num plebis accuſatus, quod exercitum in Hiſpania deſerui[illegible] furca diu virgis cæſus eſt & ſeſtertio [illegible] Extat [illegible] apud *Gell. 1. cap 14.* Contra A. Hoſtilium [illegible] qui Manlio [illegible] diem dixerat ad populum, quod de ambulacro [illegible] eſſet, & ne cum populo ædili [illegible] videre ut tribuni [illegible] cauſæ & interceſſerunt pro reo, [illegible] provocationem [illegible] Sylla quam Pompeius poſtea [illegible] Sed [illegible] de [illegible]

CAPUT [illegible]

DE REMISSIONE [illegible] VEL *ſupplicii.*

SUMMARIA.

1. *Gratia Principis impetrata,* [illegible]
2. [illegible]
3. [illegible]
4. *Princeps* [illegible]
5. [illegible]
6. *Gratia* [illegible]
7. [illegible]
8. [illegible]
9. [illegible]
10. [illegible]
11. [illegible]
12. [illegible]
13. [illegible]
14. [illegible]
15. [illegible]
16. [illegible]
17. [illegible]
18. [illegible]

19. [illegible] *timus non* [illegible]

20. [illegible] *minatus* [illegible]

21. *Legislator* [illegible] *magis consideras, quam re*[illegible]

22. *In omnibus specie*[illegible] [illegible] *actiones liberantur, dempto principali.*

23. [illegible] *contra* [illegible] *nemini* [illegible]

24 [illegible]

25 *Quæstionis* [illegible] *indagatio*

26. *Propter præsumptio*[illegible] *torqueri debet.*

27. *Præsumptiones jur*[illegible] *ure expressis, plena* [illegible]

28. *Quomodo in causa* [illegible] *quæstio*

29. *In genere* [illegible]

30. [illegible] *ipse malefici* [illegible] *confiterit, quo* [illegible] *tetur reus*

31. [illegible]

32. *Reus* [illegible] *cans, an* [illegible] *torquendus.*

33. *An* [illegible] *extrajudicia*[illegible] *fit, ad* [illegible] *quæstionem?*

34. *Non* [illegible] *major* [illegible] *quam quæ ex defectu* [illegible]

35 [illegible] *qua dicatur.*

36. *An ex* [illegible] *indicia purget?*

37. *Dolus* [illegible] *ut lepra* [illegible] *pro* [illegible]

38. [illegible] *potest confessionem, ad* [illegible]

39. [illegible] *non* [illegible]

40. [illegible] *sit re*[illegible]

41 [illegible] *stic*

42. [illegible] *fiet* [illegible] *a patre ad supplicium raptum?*

43. *An cautela* [illegible]

44. *Declaratur hæc cautela* [illegible] *plo.*

45. *An reus* [illegible] *quando* [illegible] *venerit* [illegible] *reo, ad locum supplicii* [illegible]

46. *An hoc privilegium habeant satrificuli & sacerdotes in genere?*

47. *De* [illegible] *Pontifi*[illegible] [illegible] *digna &* [illegible]

48. [illegible] *Cardinalium, pro* [illegible] *fuit* [illegible]

49. [illegible] *& ad* [illegible] *remissionem* [illegible]

50. [illegible] *contra* [illegible]

51. [illegible]

52. *Ob* [illegible] *tur remissionem.*

53. *An* [illegible] *habeatur,*

54. [illegible] *in ca*[illegible]

55. [illegible]

56. [illegible]

57 [illegible] *in subol*[illegible] *repertere potest* [illegible]

58 [illegible] *quæ d*[illegible] [illegible]

60. [illegible] *non ut* [illegible] *mu*[illegible]

61. [illegible] *improbrum, a quo sibi* [illegible]

62. [illegible] *pœna remissi*[illegible]

63. [illegible] *venia* [illegible]

64. [illegible] *endum qui* [illegible]

65. [illegible]

66. *An* [illegible] *in terram, fit* [illegible]

[illegible] [illegible]

Q*U*æ [illegible] una cum pœnis remiſſibiles eſſe [illegible] Princeps conſtat [illegible] delicta [illegible] [illegible] pendet, remittere [illegible] *[illegible]* [illegible] *[illegible]* hinc *Idem* [illegible] Principi [illegible] tenetur confiteri delictum, [illegible] dicitur [illegible] ergo [illegible] † [illegible] probationis [illegible] [illegible] iudiciorum & quæſtionis [illegible] [illegible] totum, idem [illegible] partem, *[illegible] topic. [illegible] a tot. ad part.* [illegible]

2 conſequatur reus nondum quæſtione [illegible] [illegible] pœſſimæ contrariæ [illegible] [illegible]

3 non etiam † [illegible] abſtinendum à malo, quam [illegible] *Conſtit. art. [illegible] Gabler. art. [illegible]* [illegible]

4 [illegible] *Novella ut nu[illegible]* [illegible] poſtquam [illegible] abſoluens reum, poteſt [illegible] [illegible] parte [illegible] & quo [illegible] [illegible] nihil eſt [illegible] [illegible] *[illegible].*

5 [illegible] † verò [illegible] conferendi [illegible] Principes Imperii, *l. [illegible] ff. de pœn.* argumento [illegible] Principes territoriorum [illegible] [illegible] Si [illegible] favore populi [illegible] bellis. [illegible] *de* [illegible] à jure [illegible] [illegible] *[illegible]* Regno Neapoli, [illegible] inferiore [illegible] *[illegible] Philipp.* [illegible] Carol. IV. [illegible] [illegible] Imperii [illegible] [illegible] [illegible] *[illegible]* [illegible] *de Regim.* [illegible] Principum Conſiliarii [illegible]

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[illegible] de remiſſione [illegible] non [illegible] quem Deus punire [illegible] aliqua de cauſa, de promptâ [illegible] claſſe, quas de remiſſione [illegible] pœnarum [illegible] Tiraquell. quæ [illegible] neque enim [illegible] Principum miſericordia [illegible] clementia [illegible] debet, hinc optima Imperatoris vox apud Senecam: nullam inveni [illegible], *[illegible] cap. 3. Et Johan. de Pineda in Job. tom. 2. cap. 41. verſ. 7. num. 7.* [illegible] † [illegible] clementes, qui facinora 7
[illegible] impunita, [illegible] & [illegible] appellas, cum nihil miſerius [illegible] vero, qui licentiam delinquendi [illegible] & propter puſillum & negligentiam [illegible] indulget, *Johan. Spina. [illegible] pag. [illegible] part. 1. de [illegible] cap. [illegible] num. 39.* vulgo etiam dicimus: [illegible] peccat qui peccanti [illegible] *[illegible] ad* 8
[illegible] Germanor. in [illegible] pag. [illegible] [illegible] publicè [illegible] [illegible] per [illegible] cenſuit, *Alphonſ. Toſtat. in Matth. tom. 1.* [illegible] † [illegible] 9
[illegible] ſpeculantur, [illegible] hominibus [illegible] [illegible] Deum Ter Opt. Maximum [illegible] [illegible] totam gentem [illegible] *[illegible] Diodor. Siculus [illegible] vol. 16 pag. [illegible].*

M[illegible] etiam hoc [illegible] cauſis [illegible] pro-
[illegible] non † [illegible] par- 10
tis offenſæ [illegible] *Bart. [illegible] compoſitio [illegible] de remiſſ. [illegible] princip. num. 2 [illegible] pag. [illegible]* Quod [illegible] hic [illegible] [illegible] totius [illegible] in Ducatu Mediolanenſi id [illegible] obſervatur, *B[illegible] q[illegible] 2. Cod. de leg. [illegible]* [illegible] ſecundum [illegible] intelligitur [illegible] [illegible] aliquam, *Bart. in l. [illegible] Et [illegible] pact. e [illegible] d. tr. in tit. [illegible] n. 12.* Unde [illegible] morte hominis ubi [illegible] *[illegible] Bart. in l. damnum ff. de damn. infect. Boſſ. d. [illegible] n. 13,* quod verum [illegible] in pa-
[illegible] *[illegible]* [illegible] *[illegible] Boſſ. [illegible]* [illegible] au-
[illegible] vel [illegible] modo ne [illegible] vel [illegible] nunc *Boſſ. de remiſſ. ex [illegible]* [illegible] † [illegible] collo [illegible] † [illegible] 11
[illegible] nullam [illegible] producit, *[illegible]* 12
Cod. de [illegible] [illegible] autem gratia [illegible] 13
[illegible] modo [illegible] gratia [illegible] clementia [illegible] [illegible]
[illegible].

ne expreſſione delicti reiterati, *Iaſon. in d. l. nec damnoſa*, [illegible] *num.* 15 hinc vulgariter d[illegible]. Quod qui d[illegible] conſequ[illegible], *Dd. in l. Ba*[illegible] *ad SCtum Trebellian* [illegible] *in §. in perſonam, Inſt. de a*[illegible] *num.* 2[illegible] & conſuen[illegible] peccatum facit mortale, *c. fin. de temp. ordin. cap.* [illegible]

14 *par. cau. 42. num. 4.* tantumque abeſt, † remiſſibile [illegible], quod potius duplicatas petit pœnas, *argum. l.* [illegible] *Fa*-*rinacc. d. loc. num. 14.* [illegible] *part 1. de* [illegible] *gener. cap.* [illegible] cti turpitudo & [illegible] non allegatum, [illegible] Principem, nec del[illegible] *de reſcript.* [illegible] *vel ſi tacentur id, quod* [illegible] *fuiſſet non* [illegible]*rus, aut ſaltem non tam* [illegible] ſi reus narraverit. Quod pacē habeat [illegible]

15 retulerit *Boſſ. d. loc.* mendax † [illegible] *de crim. falſ. c. ſi quando* [illegible] *de reſcript. l. 1* [illegible] perator conqueritur, quod inverecunda [illegible] ro extrahantur beneficia & gratiæ aliàs non [illegible] 4[illegible] *Gail. 3. obſerv. 14. num. 6.* Quia [illegible] inſtruitur, *c. fin. de reſcrip.* [illegible] qui alias non [illegible] niſi quod iuri & iuſtitiæ eſt conſentaneum, [illegible]

16 Neque obſtat ſententia *Boſſ. d. loc. num.* [illegible] ubi [illegible] tere poſſe, accuſatore [illegible], & capitalem & pecuniariam [illegible] *l. 4. ff. de pœn.* quia, inquit, [illegible] Quod Princeps poſſit [illegible] *de feud. p. 4.* [illegible] *vide* Reinking [illegible] Reſpondetur non [illegible] te & gratia ſingular[illegible] quæ [illegible]

17 [illegible] † [illegible]

procidiſſet τῷ ἐξ ἀζώσ ἐλέγχῳ, Imperator commotus, inde incolumem reum dimiſit, hoc tantum monens, cogitaret fur inpoſterum, timorem ipſe longe vehementiorem eſſe affectum *Idem dict. loc.* Porro Alphonſus ſenior, Rex Siciliæ conſueverat loturus dare ſervandos annulos proximo cuivis ex aulicis; cuidam igitur ſemel cum annulos tradidiſſet, qui oblitum Regem arbitrabatur, & propterea in uſum proprium verterat annulos; Alphonſus rem diſſimulavit atque pro eis alios induit annulos, conſuetumque morem ſervavit: Itaque poſt aliquot dies Alphonſo loturo, cum idem aſtaret, qui annulos priores retinuerat, manum porrexit, tanquam a rege annulos, uti olim egerat, accepturus. Alphonſus vero retracta ad ſe manu, in aurem ſubmiſsâ voce dixit furi. Hos tibi annulos obſervandos dabo, ſi prius alios, quos dedi, reſtitueris; *Egnat. lib. 4. cap* 8.

Præterea inter cauſas remiſſionum vulgò recenſentur cautelæ illæ, uti nuncupātur, liberandi reos à quæſtione vel morte, quâ de re *Barthol. Cepoll in tract. Cautel. cautela 1. & 2. Joan. Neviz. in tr. quem inſcribit ſylvam nuptialem, c. 1. num. 60. & ſeqq. Jaſon. in l. 1. C. de his, quib. ut indign. Thom. Ferrar. in tr. Cautel. cautel. 5. Joh. de Arnono in tr. Cautel. cautel. 1. 3. 7. & ſeqq. Marc. Anton. Blanc. in tr. Cautel. cautel. 1. 2. 3. 4. 5. 6. 7. & ſeqq. Raimund. P. Fichard. in tract. Cautel. cautel. 68. 69. 70. 71. & ſeqq.*

Quantum liberationem reſpectu quæſtionis attinet (1.) non † tam 18 infringi quæſtio & confeſſio prima poterit, ne ſi inficietur delictum reus ad banchum juris uti loquuntur deductus, ut confeſſionem ſub quæſtione factam repetat ratamq; faciat, reducatur ad priora tormenta, uti ſupra abundè diximus quomodo reus ad banchum juris revocans confeſſionem, ſit retorquendus. Nempe ut patronus rectà impugnet acta inquiſitoria, videatque quo pacto & ratione ex cauſa nullitatis, inquiſitionis punctum in dubium vocare, nec non indicia enervare poſſit. Etenim jure tritum eſt, quod † ſine 19 indiciis legitimis tortus & confeſſus nihil agat, nec confeſſio præjudicet confitenti reo, quanquam etiam confeſſionem reperierit, *Farinac. in tom. conſil. conſ. 19. n. 1.* ubi ait: quod † nec tertio id eſt ſocio quem nominavit noceat hu- 20 juſmodi confeſſio. Cautelam hanc tradit *Raimund. Fichard. in tract. Cautel. cautel. 68. nec non Auguſt. Ariminenſ. in addit. ad Aretin. de malef. in §. fama publica:* ubi refert, quod beneficio hujus cautelæ quendam liberaverit, qui ſui nominis & cognominis fuerit, *vide Hyppol. de Marſil. conſil. 46. num.* 12. *& conſil. 52 & 65. num.* 50 *volum.* 1. *Alexand. conſil. 5. vol.* 1. (2.) Infertur ex prædictis, quod pendente hac exceptione ſocii & conſortes delictorum non poſſint torqueri, *Farinac. d. conſil* 19. Quia ſublato vel ſuſpenſo principali, acceſſorium ſubſiſtere non poteſt. nam

Collapſa ruunt ſubductis tecta ruinis.

Acceſſorium ſequitur naturam ſui principalis, neque ſine ſubjecto conſtare

poteſt adjunctum rei, *c. acceſſorium de R. I. in 6.* Proinde vulgariter dicimus:
21 legumlatores † cauſam rei proximam conſiderare magis quam remotam,
l. rogaſti, ff. de reb. cred. Tiraquel. in tractat. ceſſante cauſa, &c. lim. 20. Porrò ac-
ceſſorium ſequi ſuum principale tanquam ſuam cauſam ex qua omne fomen-
tum recipiat, *l. juſtiſſime ff. de Edil. edict.* adeò ut acceſſorium tollatur vel indu-
catur & confirmetur cum principali, *Philipp. Franc. in d. c. acceſſorium.* acceſ-
ſorium enim locum non habet, ſi principalis cauſa non ſubſiſtit, *l. 178 ff. de R.*
22 *I.* Hinc † in omnibus ſpeciebus liberationum, etiam acceſſiones liberan-
tur, dempto & ſublato principali, *l. 46. ſ. de fidejuſſ. Aleman. de jur. monet.
conſult. 8 quæſt. princ. 2. pag. 727.* Quidni liberato & dimiſſo reo confitente,
23 liberabuntur ſocii, niſi ſeparata † judicia adhuc ſtringerent adverſus ſocios,
præter nominationem vel confeſſionem factam. Cum ſeparatorum ſit ſepa-
24 rata ratio, *l. 32. ff. ad L. Aquil.* Neq; † enim acceſſorium id dici meruit, quod
aliunde præterquam à prima origine ut crede batur, initia & incrementa ſua
aſſumpſit, *Petr. Peck. in dicta regula 42.* § 3. Cautela eſt, ut reus torquen-
dus, qui quoque confeſſus eſt quodammodo, adferat & alleget in cauſa ho-
micidii, neceſſariam defenſionem, quo poſito torqueri nequit reus, ratio eſt,
quia effectus torturæ eſt, ut confiteatur reus, *t. t. ff. de qq.* jam verò confeſſus
eſt crimen accuſatus. Ergo pendente quæſtione hac nihil innovabitur. Quin
imò juxta nonnullos nedum pœnâ ordinaria plecti poteſt hic reus propter
confeſſionem ſcilicet qualificatam, *Thom. Ferrat. in tract. Cautel. cautel.* 5. ubi
magnum DD. catalogum pro hac ſua aſſertione allegat, & refert *Jaſon. in l. 3.
ff. de juſt. & jure.* quod hac cautela cujus primus inventor eſt, *Abbas in c. au-
ditis, ext. de præſcript.* ſibi immenſum comparârit honorem, ratio verò eſt ju-
ris ita conſtituti. Quod objectâ hac delicti qualitate, probatio delicti quoad
dolum & proairesin occidendi obſcuretur, quanquam neceſſaria defenſio,
quæ probationis eſt difficilioris, non ſit ex omni aſſe probata. At in cauſis cri-
minalibus, probationes requiruntur luce meridiana clariores, *l. ſciant cuncti,
Cod. de probat.* Neq; obſtat, quod violenta contra reum adferentem nec pro-
bantem neceſſariam defenſionem ſtringant indicia, nempe quod dolose oc-
ciderit hominem, ut ſic magiſtratus ad eruendam veritatem haud immeritò
25 ſubjuget quæſtioni reum quia † quæſtionis finis eſt veritatis indagatio, *l. 1.
§. 22. et 1. 27. ff. de qq.* Reſpondeo indicia iſtiuſmodi eſſe præſumptiones le-
26 gum vel juris, ob † quas nemo regulariter torqueri poteſt, *gloſſ. in l. ſi tutor,
Cod. de peric. tutor. &c. Thom. Ferrat. dict. loc. num. 3.* ſed inſtas, quia liquidiſſimè
indicantur probationes præſumptiones legum, *d. gloſſ. citato loco.* conſequens,
ut non probata defenſione allegata, reus pœna ordinaria plectatur, nam non
probans qualitatem adjectam cauſæ omnino puniendus eſt modo ordinario,
27 *Bald. conſ. 2. vol. 1.* Reſpondet *Ferrat. dict. loc.* quod præſumptiones †
juris inducluus jure expreſſis demum efficiant plenam probationem, not.
l. Cum

l.Cod.de adult. at in præſentiarum lex nihil diſponit. Ergo, idq; tantò fortius, Quod in odium reorum receptæ conſtitutiones peculiares omnino ſint reſtringendæ, nec ultra literas, prout reperiuntur, extendēdæ, *c. odia de R.J.in 6.* (4.) Ex cautela hac ſequitur, quod in cauſis paribus idem ſtatuere fas ſit, ubi reus nonnihil opponit, quod dolum & fraudem excludat. Cum parium ſit idem judicium, & intellectus ſit infirmitas legem quærere, ubi rationem habemus naturalem, *Ferdin.Vaſqu. illuſt.controv. cap.21.num.32.* Verbi gratia, pone gravari aliquem indicio rapinæ vel latrocinii, † indiciatus confitetur, 28 quod rapuerit res alienas, ſubinde tamen addit, & ex poſt facto demonſtrare eſt paratus, quod reverà exiſtimârit res bannitorū raptas vel hoſtium fuiſſe, longe plus qualificata hæc confeſſio ſtringit in cauſa cædis parili, ut ſiquidem reus adſerat ſe hominem occidiſſe, at caſu vel culpa aliqua levi, unde pœna ordinaria, multo minus quæſtione plecti vel prægravari debeat. Sanè eadem & par juris ratio hic dominatur, uti in cautela illa relata ex Thoma Ferrato. Quin imò ſi rem penitius intuemur, hoc ſequitur ex præſuppoſita cautela, quod quæcunque exceptiones impediunt quæſtionem, eæ ipſæ ad cautelam hanc ſpectent, de exceptionibus verò iſtiuſmodi agit ſupra cap. 2[illegible]. quò remitto lectorem. Miſera itaque apparet cautela, unde tot derivari poſſunt ſubſidia juris, quæ alias conceduntur jure communi. (5.) Ejuſdem farinæ cautela eſt, quam adducit Johannes de Arnono dicens: Quod etiam † poſt quæ- 29 ſtionem ad remorandam quæſtionem ulteriorem, quæ adhiberi ſolet & repeti cum reus recantaverit confeſſionem ad banchum juris, opponi poſſit exceptio. Quod nondum conſtet de corpore occiſi hominis, *Arnon.cautel. 8.allegans Angel.in l. unic.col.2.ff.de confeſſ.& in l.certum,ff. eod.* memini præfectum quendam conſuluiſſe peritiores poſt primam quæſtionem, quæ confeſſionem expreſſerat reo, reſpondiſſe autem Academiam † male proceſ- 30 ſiſſe illum, qui torqueri feciſſet reum, cum ex actis non conſtaret de corpore occiſi vel ipſo facto, quod faſſus erat reus, inhærendum idcircò revocationi confeſſionis. Illo acta indiciorum integra ad Academiam tranſmittente decreta eſt quæſtio ſecunda, quia ſecundaria quoq; ſuberant indicia, & reus vagabundus crimina confitebatur in regionibus exoticis & longè remotis patrata, & tandem confeſſione toties quoties repertâ pœna & ultimum ſupplicium. (6.) Diximus ſupra in cauſis indiciorum nonnunquam poſitiones formandas & requirendas eſſe reorum reſponſiones, in quo objecto etiam non pauci ex noſtris ſtatuunt, quod reus perperam reſpondens & partim affirmans poſitionem unam vel alteram, confeſſio † hæc poſitiva & adhuc 31 anceps non parere poſſit quæſtionem junctis indiciis, ſiquidem reus eandem revocet, allegando dolum adverſarii, nempe quod dolo malo inductus ſit ad reſpondendum, *gloſſ fin.in l. error, C.de juris & facti ignorant, ubi Jaſon & Bartol.in l.1.ff.de eo per quem factum, &c. quos allegat & ſequitur Arnon. cautel.9*

Par ſtringere videtur ratio, quandoquidem judex blanditiis & ſpe gratiæ confeſſionem rei eſt expiſcatus, quam is, videns ſe deceptum, propter periculum imminens, quia judex ſtare promiſſæ gratiæ noluerit, revocavit, qua de re
32 *part.1.indic.cap.*107.*num.*9.*& ſeqq.* tantum abeſt judicem, † reum ad banchum juris ubi reperenda eſt confeſſio, revocantem priora, exinde ad quæſtionem rectà redire & properare poſſe, quemadmodum diximus, negationem tormentis novis examinandam: niſi quod hæc confeſſio blanditiis & dolis expreſſa indicium pariat, & junctis indiciis aliis, demum quæſtionem producat, *vide idem cap.*107. (7.) Quanquam reus ex confeſſione extrajudiciali non poſſit jure condemnari in cauſis criminalibus, *gloſſ. & Dd. paſſim in c.de hoc.extr.de ſimon.* uti nec in civilibus, *gloſſ. in c. ſi cautio. de fid. inſtr.* du-
33 bium tamen non eſt, † quin confeſſio extrajudicialis pariat quæſtionem, *vide part.* 1. *cap.* 5. ad impediendam verò quæſtionem cautela traditur communis, ut reus confeſſionem illam purè revocet, adeò, ut nedum requiratur erroris probatio, hanc practicam tradit, *Balaus in l. unic. in col. penult. Cod. de conf. ff Felin. in c. olim. ext. de reſcript. Joan. de Arnon. in tr. Cautel. cautel.* 19. de confeſſione coram judice incompetenti facta, eadem eſt conſequentia juris, *d.p.*1.*c.*5. *de ind. gener.* neque hic obſtat, quod confeſſio facta ſuper proceſſu nullo ſit prorſus nulla, ſed adhuc condemnationem & pœnam producat, *Socin. in c. venerabilis, ext. de judic vide Marſil. in l.*1.*§ Divus. num.* 10. At confeſſio coram incompetenti facta, confeſſio dicitur ſuper proceſſu nullo, cum
34 non † ſit major nullitas, quam quæ ex defectu poteſtatis promanat, *Vant. in tr. de nullit. de null. ex defect. judic. &c.* Ergo.

Reſpondeo, quod propoſitio major de confeſſione ficta loquatur, vi-
35 delicet de cotumacia, † quæ confeſſio ficta dicitur, *vide ſupra de contumac.* eſt enim in odium contumacis receptum, ut proceſſus ſuapte natura nullus ſubſiſtat in cauſa contumaciæ, *Barr. in conſil.* quod incipit à Domino Cyno *Specul. de libell. concept. Bald. in l. edita, Cod. de edend. Marſil. d. loc. cum multis ibidem allegatis, Matth. de Afflict. in deciſ. Neapolitan.* [illegible] (8.) Cautela ad impediendam quæſtionem eſt, ſiquidem pars offenſa exculpave-
36 rit reum, modo fraus & malitia abſit quæ † exculpatio quoque indicia tollit ut ſtatuit, *Marc. Anton. Blanc in tr. caut. cautel* + *Joan. de Arnon. d. loc. cautel.* [illegible] ſublatis vero & dem[illegible]tis indiciis, nullus eſt quæſtioni locus, *L.*1.*& tot. tit. ff. de qq.* Cæterum ſi in dolo exculpatio parta, prece & precio impetrata fuerit, tantum abeſt, quin ne idem colluſor patiatur pro admiſſo coercitio-
37 nem, [illegible] jus & judicium technis defraudare & fallere ſategit: dolus † eum doloſum [illegible] præ[illegible]t, ut lepra leproſum, & nemo ex ſuo dolo & culpa præmium vel commodum acquirere debet, quia dolo potius eſt occurrendum
38 *L.* [illegible] *ff. de dol. mal.* (9.) Porrò minor † revocare poteſt confeſſionem [illegible] tutore vel curatore factam, ut evitet quæſtionem, *vide Marſil.* [illegible]

*flict in deciſ. Neapol.deciſ.*208. qui quoque reſtitui poteſt in integrum adverſus confeſſionem propriam, *Idem dict. loc.* dummodo errorem probare ſit
paratus, qui veritati non præjudicat, *l. calcularii, ff.de adminiſt. rei ad civit.*
*Maſcard. de probat. concluſ.*378. neque adverſatur, quod in cauſa † crimi- 39
nali regulariter non habeat locum reſtitutio, *l.* 1. *Cod. ſi adverſ. delict. l. auxi-*
lium, §. in delict. ff.de minor. quæ quoad ſententiam latam, ſententia vera eſt,
Marc. Anton. Blanc. dict. loc. cautel. 6. Sententia enim temere reſcindi
non debet, niſi † apertiſſima innocentiæ argumenta emergant, quæ in 40
continenti ſit probaturus reus: Nulla unquam de morte hominis cunctatio
ſera eſt, *Juvenalis Satyr.*6.*l.addictos, C.de appellat.Gail.*1.*de pac. pub. lib.* 1.*cap.*
18. *num.* 12. *Hyppol. de Marſil. in l.*1.*§.fin.ff.de qq.* & licet non pauci ex no-
ſtris reſcindendam non eſſe ſententiam irrequiſito Principe, ſtatuant *Gail.d.*
*loc.num.*13. *Hyppol.dict.loc.* exiſtunt tamen caſus plurimi, ſubſunt & extant
cauſæ plures, quæ ſententiam ipſo jure nullam efficiunt in cauſa criminali,
*Hyppol.d.loc.num.*55.*&* 56. *cum ſeqq.* (10.) Quanquam judex in cauſis crimi-
nalibus inquirere poſſit indiſtinctè in flagitia vel reum flagitiorum, *cap qua-*
*liter, clem.*2.*de accuſat.l.*2. *§.ſi publico, ubi Bart. ff de adult.* nec non exinde &
ſucceſſivè deſcendere ad quæſtionem ipſam, *l.* 1. *per tot.ff. de qq.* interim ta-
men certum eſt hoc, quod ante omnia incumbat judici, ut præmoneat offen-
ſum an velit accuſare necne? quo caſu inquiſitio † ceſſat, modo accuſator 41
non deſiſtat in fraudem legis ex SCto Turpilliano *Alexand. in not. ad Bar-*
tol. d.l 2. *Marc Blanc. Patavin in cautel. crim. cautel.* 13. ibi: & ideo medio
fac amicorum ut offenſus te accuſet. Cæterùm cautelæ, quibus ipſæ pœna-
rum remiſſiones acquiruntur ſunt, juxta quorundam tradita. (1.) Si in cau-
ſa † læſæ majeſtatis, Pater filium majeſtatis læſum ipſe offerat ſiſtatque ſup- 42
plicio, *l.*13. *§.*6. *ff.de re milit.l.*4. *§.*11. *ff.eod. Raim.de Forlivio uti teſtis eſt Cæpoll.*
in tract.cautel. caut. 1. textus hoſce extendit, ſicque obſervatum fuiſſe ſcribit
in civitate Forlivii in aliis criminalibus, *Felin. in cap.quærentis, de off deleg.* Et
quanquam periculoſa ſit hæc cautela ut idem ait Cæpolla, in cauſa læſæ ma-
jeſtatis, *d.loc.in fine*, dicit tamen, quod in urbe Truxinii quoq; ſic reſponſum
fuerit *à Paulo de Caſtro conſil* 136. porro meminit ille, quod cum pater qui-
dam exhiberet filium læſæ majeſtatis reum, recitaretque textum *d.l.*13. Im-
peratorem fuiſſe avidum introſpiciendi textum, quem cum deprehenderit
clarum & liquidū. non pœna ordinaria ſed relegatione decennali mulctatum
fuiſſe filium, *Johan. Nevizani in ſylva nupt. lib.* 1. *§. deveniendo igitur ad quæ-*
*ſtionem noſtram, &c. num.*58. *Joan. Borcholt. de feud.cap.*7.*num* 58. *ubi ex Salycet. refert*, quod in cauſa homicidii, *d.l.*13.*§.* 6. *ff. de re milit.* ut plurimum poſ-
ſit habere locum, cum minus ſit occidere privatum, quam offendere ipſum
Auguſtum caput. Ergò facilius condonetur illi, nam argumentum à minori
affirmativè conſtructum efficax eſt, *Eberhard.in top. in loc. a min. vide part.* 1.

cap.14. de indic. gener. Ælian.lib.1.cap.34. cui ll. ſanctioni par eſt conſtitutio feudalis *in c. imperialem, §. inſuper, de feudi prohib. alien. per Frid.* Si, inquit Fridericus, filius vaſalli Dominum offenderit, Pater à Domino requiſitus, deducat filium ad ſatisfaciendum Domino, vel à ſe filium ſeparet. Et ſi Pater vult filium deducere ut ſatisfaciat, & filius contemnat, patre mortuo in feudo non ſuccedet, niſi prius Domino ſatisfecerit, quod *Guntherus libro 8.* ita eleganter expreſſit.

Si patris Dominum vaſalli filius acri,
Læſerit offenſa, feſtinet providus illum
Conciliare pater, quod ſi contemnet agendum,
Munere privetur, ſi verò audire monentem
Filius indomita neglexerit aure parentem,
Non erit in feudo ſucceſſor idoneus illo
Ni prius acceſſam Domini placaverit iram.

43 Porrò non pauci extendunt textum *d.l.13.de re milit.* ad ſpontaneam † propriamque ſumptibus exhibitionem, ut ſi delicti reus ſeipſum offerat judici. *vide Bodin. 1. de republ.1. Joan. Neviz. dict.loc.* quæ extenſio an ſubſiſtere poſſit dubito, præjudicia ſanè & exempla, (quia ſubticente lege ſcripta, tacere etiam debent leges animatæ) aliud ſuggerunt, cui applaudit optima juris ratio præſidis officium eſſe, ut purget provinciam malis hominibus, *l. 3. ff. de off. præſ.* & ne quæ ratio remiſſiva tributa huic, conferatur illi vel alteri delicti generi, ut tandem delicta maneant impunita. Quamvis in poteſtate ſit ſummi Principis etiam pœnarum diſpenſatio & remiſſio, qua de re in principio hujus capitis diximus. Imo ecquid ſingularitatis ſubeſt in remiſſione quoad ſubjectam materiam, cum quivis privatus illatam injuriam queat remittere, quod extra
44 controverſiam eſt, quidni Cæſar Romanus? declarabo † hunc locum exemplis illuſtrioribus, quæ haud ingrata fore exiſtimabo lectori, rara ſunt & jucunda.

Magnus Erici F. ſcribit M. Saxo *libro decimo quinto.* Cum Canuto & Carolo, quibus paterna cum Valdemaro Rege Danorum neceſſitudo erat, opprimendi per inſidias Regis conſilium cepit. Cum res diu latuiſſet, quidam Teutones inſidiarum conſcii, cum fortè Holſatiam peragrantes, cujuſdam Eremitæ hoſpitio excepti fuiſſent, ejuſque cubiculum à ſe medio tantum pariete diſcretum neſcirent, nocturno inv[illegible] ſermone vehementer ſe mirari dixere, quo pacto Rex inter tot inſidias adhuc luce frueretur, quas Magnus cum Caroli filiis ejus capiti clandeſtino conſilio [illegible] eſſet, Eremita per quendam Abbatem Regi hoc ipſum nunciandum curavit, Rex cum ex indicio locorum, argumentisque temporum, necnon itinerum ſuorum circumſtantiis, fidem aſſertis [illegible] cepiſſet, cum de conjuratis judicio non convictis ſupplicium [illegible]

accuratiore militum cuſtodia ſe cinxit. Qua inſolentiâ ſatellitii, conjuratis deprodiris inſidiis, in ſuſpicionem adductis, Magnus in Saxoniam, Carolus & Canutus in Gothiam ſponte profugêre. Magnus cum ad dicendam cauſam ſub publica fide veniſſet, crimen ſuum aperte faſſus, nec animum ſibi nec arma, nihilque aliud quod tanto facinori conveniret, excepto Dei nutu, defuiſſe ſubjunxit. Delectatus Rex tam libro hominis reſponſo, veniam dedit. Non multo poſt tamen, cum ad Carolum & Canutum in Gothiam rei navandæ cauſa nuncium miſiſſet, in cubiculo nocte poſt aulæa repertus, confeſſione crimen aperuit. Hunc Rex ad urbem Laterenſem miſſum Thorberníque Ludenſis Præfecti cuſtodiæ traditur, carcere quam morte mulctare maluit. Jam cum Canutus & Carolus Hollandiam adorti eſſent, ille quidem ab agreſtibus captus, eundem quem Magnus carcerem expertus eſt, cæſus Carolus. Quorum patrimonium Valdemarus lege qua patriæ reos omnibus bonis damnat, adeptus, inſperata opum incrementa ſenſit.

Porrò *Egnat. lib 5. cap. 1. quem refert Zwinger. in theatr. 1. vol. 12. Alphonſus* I I. Caſtilonenſis Rex, cum Algariam urbem a Mauris poſſeſſam obſideret ad eum Maurus quidam, ut ipſum interimeret, profectus, cum captus eſſet, atque habitâ diſquiſitione fateretur, ejus rei gratiâ ſe veniſſe, ut pro patriâ diisque ſuis vitam offerret, novis amictum veſtibus, datâ inſuper pecunia, cum præſidio incolumem ad Belmarim Regem miſit. Rex, quanquam Barbarus, diu acerbâ voce increpitum quod tanti animi Regem occidere tentaſſet, ſtatim ne pœnam evaderet, interfici juſſit, *Fulg. lib. 5. c. 1.*

Sic Magnus Sfortia, Sclavetto Dalmatiæ inſigni equitum præfecto, qui in gratiam Julii Cæſaris Capuani ſe primum è perculſoribus in tranſitu caloris omnis Sfortiæ latus mucrone petiturum pollicitus fuerat, adeò generoſe pepercit, ut captum ad calam Marii, & jure belli armis & equis diſpoliatum, non modo (id improbantibus amicis) incolumem, verum omnibus impedimentis, ne quid omninò deſideraret, magna cura conquiſitis & reſtitutis, cumulate inſtructum dimiſerit perblanda & nobili contentus interrogatione, quum ad eum dixiſſet: Quiſnam furor inhumani crudeliſque animi, Sclavette, alioqui vir fortiſſime te impulit, ut nulla laceſſitus injuria adeò prolixè promitteres, te gladiū ex cædæ mea cruentum ad Jacobum Gallum, maritum Joannæ Reginæ Neapolitanæ, omninò relaturum? Sed immanis vir ad id tum oculis in terram defixis, non multò poſt apud Philippum Inſubrum Principem, perfidiæ militaris crimine convictus, in furcam pependit. Jovius in Sfortiæ vita.

Præterea Malcolmus I I I. Rex Scotorum cum conjurationem quorundam contra ſe factam deprehendiſſet, eâ diſſimulata auctorem conjurationis hominem naturâ ferocē, manu promptum, inter venationem de induſtria, tanquam ſi quid cum eo ſecretius acturus eſſet, ſeparatim ab aliis in al-

tam

tam ſylvam duxit, atque ſic locutus eſt, ſumus hic ambo armis ut viribus propè pares, & neuter noſtrum a ſuis auxilium expectat, age igitur, ut fortem virum decet, cape arma, atq, cum eo nunc manum confere, quem turpiter tu cum cæteris conjuratis per inſidias necare ſtatueras. Si me enim pugnando occideris, merebitur victoria laudem, ſin occubueris, nobilem reddet victi mortem, victoris honor. Hæc fatus ſtricto ferro hominem aggreditur. Ille partim ſceleris conſcientia convictus, partim Regis animi magnitudine territus ad pedes ſubito procidit rogitans, ne ſibi vel ſociis id facinus fraudi eſſet. Quod Malcolmus libens conceſſit, *Poly. Virgil. de invent. rer. d. libr.* Lubet adhuc uno atque alio exemplo rem declarare præſentem, referunt annales Pittacum Mitelenæi Tyranni filium Cumis in tonſtrina ſedentem, à fabro quodam ferrario, impacta in caput ſecuri, fuiſſe occiſum, proindeque Cumanos homicidam vinctum miſiſſe ad Pittacum, ut de eo ſupplicium ſumeret. At ille cognitâ causâ dimiſit hominem, dicens, ignoſcentiam eſſe potiorem pœnitentiâ, ſentiens utilius eſſe condonare, quam meminiſſe injuriæ & ulciſci, *Laertius lib. 1. cap. 5.*

Sic inſignis clementia Juliani Imp. illa fuit, quam Antiochiæ oſtendit, cum à colligatoribus apud eum accuſatus eſſet Thalaſſius, qui ſub Conſtantino miniſter à ſecretis fuerat. Nam cum Galli Cæſaris, qui Juliani frater fuerat, mortis conſcius fuiſſe diceretur, facero verbo reſpondit: Æquum eſſe, cum hac in re major ipſius, quam colligantium cum Thalaſſio, injuria eſſet, ſibi quoque prius ſatisfieret. Et cum hoc dixiſſet, præfecto imperavit, ne in Thalaſſii cauſa aliud ageretur, niſi prius ſecum in gratiam eam rediiſſe intellexiſſet. Ita cavit, ut ne vel odii ſui opinio ei apud alios noceret, *Fulgoſ. lib. 5 cap. 1.*

Porrò Drachonita, Uratislai Boëmorum Principis vidua, Ludmillam ſocrum, fœminam ſanctiſſ. religionis odio in templo ſtrangulandam per Thomam & Gumonem curârat. Non defuere, qui Wenceslaum Principem ex cæde aviæ vehementer perturbatum, ad ulciſcendum inflammarent, alii ſi ipſe ulciſci nollet, ſibi hanc dari provinciam depoſcebant. Utroſq; ille quam potuit, graviſſimis verbis corripuit, quod aliena à pietate erga qualemcunque matrem, aliena deinde, à modeſtiâ & tolerantiâ Chriſtiana ſua ſete auderent, ignari, aut parum memores, quid ore ſuo dicat Dominus: Mea ultio eſt, & ego retribuam illis in tempore. Anno nondum exacto uterque illorum periit, notam ſui poſteris relinquens. Nam cum alter eorum barba rutila inſignis, alter male pedatus eſſet, illorum quoque nati natorum, & qui naſcuntur ab illis, & rufeſcunt & à pedibus laborant: nam utraq; familia apud Boëmos etiam nunc extat. *Dubravius lib. 5 in hiſtor. Boem.*

Joannes Gualbertus, Florentinus eques, cum ex agro in urbem magno hominum numero comitante rediret, eique forte obvius eſſet is, à quo non multo antè frater, quem ſolum habebat, fuerat occiſus, equo divertens [illegible]

[illegible] fratrem [illegible] [illegible] [illegible] ſuæ obitionis manu acceptam [illegible] [illegible] Imago autem [illegible] [illegible] S. Michaelis [illegible] urbe Florentia, [illegible] eſt. *Fulg. lib.* [illegible] *Paul.* [illegible]

Eum Venetiis Aloyſio Molino liberi ſex [illegible]. Quum [illegible] [illegible] mortem [illegible] [illegible] Marcus [illegible] [illegible] Itaque Marcus [illegible] [illegible] Quamquam ille perpetuò [illegible] Marcum ſuppoſitæ [illegible] [illegible] in agro Meſtrino [illegible] Molinum verò in demortui patris locum [illegible] [illegible]. *Egnat. lib.* 4. *cap.* [illegible] Craſſus Lidorum Rex, cum eſſet filius [illegible] [illegible] *Herod. lib.* [illegible] [illegible] Pietro Jurisconſultus & [illegible] [illegible] Filium [illegible] [illegible] *Fulg. lib.* [illegible]

Sic Marco Imperatori [illegible] [illegible] ſe credit, miſerumq; cadentem.

De eodem [illegible] Cajetan. [illegible]

[illegible]

Porro Theodorus [illegible]

[illegible] Cajetan. [illegible]

Denique [illegible]

[illegible]

45 2. [illegible]

[illegible]

46 [illegible] Nonnulli [illegible]

[illegible]

47 [illegible]

[illegible]

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61 dentes † converſum [illegible] & authoritatem [illegible]

[illegible] Tu autem judex, qui [illegible] debes mori, vel alia pœna corporali [illegible] [illegible] Moſaica, quod [illegible] [illegible]

[illegible] contra Chriſtianam [illegible] Carolus [illegible]

[illegible]

[illegible]

[illegible] hæc eadem [illegible] publicum, hoc [illegible] & [illegible] Sublatâ † [illegible] Augustin. de Civitate Dei, lib. [illegible] [illegible] traduunt, qua [illegible] [illegible] in terram, quem impunè dimi[illegible] Joan. [illegible] d. §. devenio igitur ad quæstionem, [illegible] venerabilis ext. de testib. Do[illegible] [illegible] Comprimis quoties [illegible] [illegible] loc. [illegible] Alii [illegible] supplicium, [illegible] [illegible] futura [illegible] [illegible]

[illegible]

Semper in [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

CAPUT LI.

DE DEGRADATIONE REORUM.

SUMMARIA.

[illegible]

[illegible]

D[illegible] Verbalis † est, quod [illegible]

[illegible]

[illegible]

[illegible] pag. 31 [illegible] lib. 4 [illegible] Anno Domini [illegible] Coloniæ per [illegible] vide [illegible]

548 [illegible]

[illegible] Epiſcopatu [illegible]

6 [illegible] Epiſcopatu [illegible] Nam bello civili [illegible] Rege in Normanniâ [illegible]

[illegible]

6 [illegible]

[illegible] donationem [illegible] Imperatorum [illegible] Papæ [illegible] Carolo [illegible] Gregor. Tholoſan. [illegible]

Reſpondeo [illegible] Imperatoribus [illegible] jus Papæ, [illegible] Carolo Magno [illegible] Imperii [illegible] Germaniæ [illegible] Carolum M. [illegible] Pontifice [illegible] Imperatorem [illegible] Imperii [illegible] Germanicum [illegible]

[illegible] Carolum M. [illegible] Pontifice [illegible] Imperii [illegible] Carolo M. [illegible] Imperatoribus [illegible] Beda [illegible]

[illegible]

CAPUT LII.

DE OFFICIO LICTORIS, SIVE MINISTRI Iuſtitiæ.

SUMMARIA.

[illegible]

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[illegible]

CAPUT VIII.

DE SUPPLICIIS ET POENIS.

Summaria.

[illegible]

[illegible]

Tiliam [illegible] Rempublicam [illegible] [illegible] [illegible]

[illegible]

[illegible]

Aeterna [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

tela, *Bart.in l.1.num.2 ff.judic.Salv.Cognol.in l.nemo aliena in fine,ff. de R.Jur.*
reo autem in cuſtodia non exiſtente, nec fidejuſſore apparente, fiſcus in bona
rei, ſine omni mora immittendus eſt, *Jul.Clar.5.ſentent.quæſt.95.num.2.* quod
† ſi reus ſolvendo non eſt, in corpore luat, juxta *l.7.ff.de juriſdict.l.fin.ff.de in* 35
jus vocand. non poterit tamen ſine decreto ſuperioris judex minor vel dele-
gatus mutare pœnam pecuniariam in corporalem, *Clar. dict. loc. num.3.* At
quid † ſi reus malit ſubire pœnam corporalem, quam ſolvere fiſco mul 36
ctam? Reſp. non audiendum eſſe reum, *Dec.in d.l. 7.§. 3.ff.de juriſdict.* Sed
utrumne judex expectare teneatur decendium priuſquam exequatur in cau-
ſis pecuniariis? Nego, ratio eſt, quod † à mulctis non recipiatur appellatio, 37
*Freder. à Mindan.de Proceſſ.lib.*1.*c.*10.

Ergo nec deferat judex appellationi: hæc enim ſe invicem arguunt, uti
in capitalibus ſimiliter eſt receptum, ut quibus † in caſibus judex appellatio- 38
ni deferre non tenetur, iiſdem in terminis confeſtim exequi poſſit, *Jul.Clar.*
*d.lib.5.q.69.num.*2. in hoc Ducatu tamen reviſiones, quas vulgò beneficia ſup-
plicandi dicimus, admittuntur ex ſuperioris curiæ decreto. Alias differri ſo-
let extra provocationis cancellos, executio ex cauſis relatis capite antep. nec
non quoties † reus fuerit impius nolens confiteri peccata & ſeſe convertere 39
ad Deũ, qui ne intereat corpore & anima, retardari poterit executio, donec ad
meliorem ſenſum redierit reus, modo fraus & ſimulatio abſit, adhibitis ſacer-
dotibus, qui fideliter & enixè de ſalute animæ hominis laborent. Idem *Clar.*
d.loc. Mulier prægnans † quoq; puniri non debet nedum caſtigari priuſquam 40
partum enixa fuerit, *l.prægnantis,ff.de pœn.* alias laudatur conſuetudo, qua ſen-
tentia capitalis † ſolet inſinuari reo per ſacerdotes, qui verbis & monitis ſa- 41
lutaribus reo denuncient mortem eumq; adhortentur ſeriò ad pœnitentiam
& patientiam, &c. *Paris de Put. in tract.Syndic.p.* 208. *Clar.d.l.5.q.99.*

Fieri autem ſolet & debet † executio in loco ſolito, niſi quoad fa- 42
moſos latrones, fures & graſſatores paulò aliter ſit receptum, *per l.25.§.15.*
ff.de pœn. nec non tempore opportuno, *l.ſi feriatus, ff.de fer. & l.custodias,ff.de*
publ.judic. ubi ſimiliter atrociores pœnæ excipiuntur, nam † famoſi latro- 43
nes diebus feriatis capi & ad ſupplicia rapi poſſunt, *l.pen. C.de fer.* Denique
quid † ſi reus ſit condemnatus ad aliquot pœnas ſeparatas? Reſp. Si pecu- 44
niariæ ſunt omnes, ſunt exſolvendæ, omnes & ſingulæ, niſi confiſcatio o-
mnium bonorum superveniat, qua confunduntur & conſumuntur mulctæ
præcedentes vel præſentes. Si capitales ſunt pœnæ & ſe invicem compa-
tiuntur, ſimiliter omnes luendæ ſunt pœnæ, ut aliquis & manu amputari de-
bet & ſuſpendi, ſanè manus prius amputabitur & deinde ſuſpendatur reus,
ſin verò pœnæ omnes infligant mortem, in arbitrio judicantis erit eligere
pœnam, quam velit *Clar.d.loc.num.9.* quo pacto & quibus expenſis erigendæ
ſint vel reficiendæ furcæ, patibula, numellæ, &c. exprimit & decidit *Conſt.*

[illegible]

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[illegible] *Cicer. ad Atticum* [illegible] *Idem ad Atticum* [illegible] *ff. ad L. Jul. majeſt. in princ.* [illegible] Conſtat autem pœnæ [illegible] non fuiſſe pares, ſed diſſonantes, ut Plutarch. refert in Artaxerxe, ubi de Scapharum ſupplicio agit, quo læſæ majeſtatis [illegible] erat autem ſupplicium [illegible] modi. Scaphas duas inter ſe congruentes accipiunt, in alteram ſupinum 14 eum, qui pœnæ eſt deſtinatus, locant, inde inducunt alteram, & coaptant ita, ut caput, manus & pedes extrà emineant, reliquum ſit incluſum corpus. Tum cibum homini præbent, quem ſi rejiciat, compellunt eum oculos fodicantes ſumere. A cibo mel & lac confuſum ei ad potum infundunt, tum ad ſolem obvertunt aſſidue oculos ejus, ut muſcarum [illegible] multitudo totam tegat faciem. Cum autem intus faciat, quæ homines, cum edunt & bibunt, neceſſe habent, [illegible] & lumbrici ex tabe & putredine excrementorum proveniunt, à quibus corpus in viſcera penetrantibus conſumitur. Poſtquam conſtitit expiraſſe hominem, ablata ſuperiore ſcapha, cernunt [illegible] corroſam, & [illegible] vermium [illegible] viſceribus eaque edentium. At hunc modum Mithridates, qui Cyrum Regis fratrem in prælio vulneraverat, & hujus facti gloriam ſibi, non Regi vendicabat, ſeptemdecim dies tabeſcens tandem interiit, *Plutarch. in Artaxerxe.* Nonnunquam laqueo ſuſpenſi & ſtrangulati ſunt rei læſæ majeſtatis, ut de [illegible] Sigebertum, [illegible] læſæ majeſtatis [illegible] *in Chron.* [illegible] *cap.* [illegible] Sic [illegible] erat & pœna [illegible] Cameli inſidens ac per urbem circumductus [illegible] præberet: quod ſupplicii genus [illegible] Armeniæ [illegible] quandoque Imperator, [illegible] *Cal. Rhod. lib.* [illegible] *antiq. cap.* 15. Quid vero hodie rei læſæ majeſtatis [illegible] puniuntur, [illegible] *Carolin. Crim. Caroli V. art.* 124. [illegible] quatuor partes & publicè hinc inde ſuſpenduntur, domus [illegible] hanc publicam, &c. *vide part.* [illegible] *4.* [illegible] Quinquies [illegible] 15 [illegible] ut contigit Mezio [illegible] *lib.* [illegible] quando [illegible] in diverſa [illegible] *cap.* [illegible] Sulla [illegible] à Mario [illegible] *Plutarch. in Cicerone.* [illegible] Romæ [illegible] † in eos, qui [illegible] publicam [illegible]

[illegible] ad ſupplicium [illegible] damnatæ, [illegible] virgines eſſent [illegible] [illegible] [illegible] [illegible] [illegible] Tiberius [illegible] [illegible] [illegible] Lib. 3. cap. 10. [illegible] quod [illegible] late [illegible] gladio [illegible] eſſe [illegible] [illegible] Criminal. ſupra allega. [illegible] loqui de [illegible] [illegible] pœnis. [illegible] de [illegible] læſæ majeſtatis [illegible] in genere. [illegible] que [illegible] hujus delicti gradus, ſic pœnæ quoque [illegible] neceſſe eſt, quoniam delicta & pœnas certa dari debet proportio. [illegible] Reip. [illegible] correctum vel potius [illegible] eſſe Conſtitutione Criminali, [illegible] pœnæ creſcere debent [illegible] [illegible] quod [illegible] læſæ majeſtatis [illegible] ſed longe [illegible] [illegible] [illegible] pœnis [illegible] antiquiſſima [illegible] ad [illegible] [illegible] [illegible] 29 [illegible] [illegible] eſt [illegible] genus [illegible] [illegible] lib. 3. [illegible] ſupplicio [illegible] [illegible] à Cicerone in [illegible] [illegible] [illegible] Morem autem verberandi & de [illegible] ſumendi, à Græcis manaſſe ad Romanos, [illegible] habemus [illegible] Mos vero [illegible] lex eſt, ſicut Cicero in quadam oratione [illegible] patriæ, quibus in exilium damnans [illegible] [illegible] Romanum [illegible] Q. [illegible] M. Tullius [illegible] more [illegible] [illegible] Syllam primum Romanorum eſſe inventum, qui [illegible] Nec [illegible]

[illegible] pœna antiquiſſima eſt ut [illegible] [illegible] 30 quia [illegible] viliſſima, fœdiſſima & ignominioſa, [illegible] mortis genus [illegible] [illegible] [illegible] pœnam [illegible] appellant, quia [illegible] [illegible] [illegible] quam [illegible] [illegible] [illegible] pag. [illegible] [illegible] inquit, à Conſtantino [illegible] capitis pœnas [illegible] genus [illegible] [illegible] [illegible] [illegible] [illegible]

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[illegible] fuit, ut [illegible] delinquentes nudatos *virgis* [illegible] *Tullia-num* & [illegible] jam morti destinati [illegible].

[illegible] Quod [illegible] ramulis ex vitibus [illegible] [illegible] *ex* [illegible] Theo-[illegible] primo [illegible] esse [illegible]. Quin eo-dem [illegible] Principes [illegible] ab Xenophone [illegible]. Quibus mox [illegible] honoi, ut [illegible] in delictis [illegible] honorarent, quoniam [illegible] *Romanos* [illegible], ut cives non virgis [illegible] [illegible], Quod a L. Floro, ac T. Livio libro 57. [illegible], & a Sci-pione *Africano*, qui Numantiam [illegible] Sed & Lucillium cen-turionem [illegible] militum [illegible] Tacitus [illegible] [illegible] vite in tergo militis [illegible] voce, [illegible] Marium [illegible] Galba quin quod [illegible] [illegible]. [illegible] inquit [illegible] [illegible] *Cal. Rod. de antiqu. lib. 10. Cap.* [illegible].

[illegible] antiqua est, [illegible] ratione introducta [illegible] [illegible] quod [illegible] [illegible] [illegible] semen [illegible] [illegible] *Ludov.* [illegible] [illegible] Tertas [illegible] [illegible] [illegible] *Andr.* [illegible] [illegible] [illegible] species, qua [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], &c.

[illegible] [illegible] [illegible] [illegible] *Cal.* [illegible]

[illegible] qui in metallum, & eos qui in opus metalli damnantur, differen[illegible] [illegible] quod qui in metalli damnantur [illegible] quam [illegible] [illegible] in metallum [illegible] metallo [illegible] *[illegible]*. Hinc Metallici, qui ea poena damnantur. [illegible] de verbis [illegible].

Denique supplicia [illegible] quam [illegible] & bona cetera [illegible] qui de [illegible] *[illegible] cap. [illegible]* ibi; mulctae pecuniariae [illegible] [illegible] quam [illegible] fas erat. *Quippe de mulcta*-*rum* [illegible], tam consulibus quam tribunis plebis. [illegible] quibus maxima erat mulcta [illegible] millium & viginti [illegible], quia plus triginta bobus & duabus ovibus quem[illegible] mulctari non decebat [illegible] boves centussibus, oves vero decus[illegible] [illegible] [illegible] Romani Regis [illegible], &c.

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

tela, *Bart.in l.1.num.2.ff.judic.Salv.Cognol. in l.nemo aliena in fine,ff. de R. Jur.*
reo autem in cuſtodia non exiſtente,nec fidejuſſore apparente, fiſcus in bona
rei,ſine omni mora immittendus eſt, *Jul.Clar.5.ſentent.quæſt.95.num.2.*quod
† ſi reus ſolvendo non eſt, in corpore luat, juxta *l.7.ff.de juriſdict.l.fin.ff.de in* 35
*jus vocand.*non poterit tamen ſine decreto ſuperioris judex minor vel dele-
gatus mutare pœnam pecuniariam in corporalem, *Clar.dict.loc.num.3.* At
quid † ſi reus malit ſubire pœnam corporalem, quam ſolvere fiſco mul 36
ctam? Reſp. non audiendum eſſe reum, *Dec.in d.l. 7.§.3.ff.de juriſdict.* Sed
utrumne judex expectare teneatur decendium priuſquam exequatur in cau-
ſis pecuniariis? Nego, ratio eſt, quod † à mulctis non recipiatur appellatio, 37
Frider.Mindan.de Proceſſ.lib.1.c.10.

Ergo nec deferat judex appellationi: hæc enim ſe invicem arguunt, uti
in capitalibus ſimiliter eſt receptum,ut quibus † in caſibus judex appellatio- 38
ni deferre non tenetur, iiſdem in terminis confeſtim exequi poſſit, *Jul.Clar.*
*d.lib.5.q.69.num.2.*in hoc Ducatu tamen reviſiones,quas vulgò beneficia ſup-
plicandi dicimus, admittuntur ex ſuperioris curiæ decreto. Alias differri ſo-
let extra provocationis cancellos, executio ex cauſis relatis capite antep. nec
non quoties † reus fuerit impius nolens confiteri peccata & ſeſe convertere 39
ad Deũ,qui ne intereat corpore & anima,retardari poterit executio,donec ad
meliorem ſenſum redierit reus,modo fraus & ſimulatio abſit,adhibitis ſacer-
dotibus,qui fideliter & enixè de ſalute animæ hominis laborent. Idem *Clar.*
*d.loc.*Mulier prægnans † quoq; puniri non debet nedum caſtigari priuſquam 40
partum enixa fuerit,*l.prægnantis,ff.de pœn.*alias laudatur conſuetudo,qua ſen-
tentia capitalis † ſolet inſinuari reo per ſacerdotes, qui verbis & monitis ſa- 41
lutaribus reo denuncient mortem eumq; adhortentur ſeriò ad pœnitentiam
& patientiam,&c.*Paris de Put. in tract.Syndic.p.*208.*Clar.d.l.5.q.99.*

Fieri autem ſolet & debet † executio in loco ſolito, niſi quoad fa- 42
moſos latrones, fures & graſſatores paulò aliter ſit receptum, *per l.25.§.15.*
ff.de pœn. nec non tempore opportuno, *l.ſi feriatis, ff.de fer. & l.cuſtodias,ff.de*
publ.judic. ubi ſimiliter atrociores pœnæ excipiuntur, nam † famoſi latro- 43
nes diebus feriatis capi & ad ſupplicia rapi poſſunt, *l.pen.C.de fer.* Denique
quid † ſi reus ſit condemnatus ad aliquot pœnas ſeparatas? Reſp. Si pecu- 44
niariæ ſunt omnes, ſunt exſolvendæ, omnes & ſingulæ, niſi confiſcatio o-

Crim. Carol. V. art. Porrò quomodo amittatur merum Imperium quoad non uſum, & qualiter præſcribatur, tollatur poteſtas erigendi furcas? Vide *Gail. 2. obſerv. 60. Schurff. conſil. 29. cent. 3.* imò ſi propter controverſam juriſdictionem cadaver auſferatur? vide *Deput. Spirenſ. de Anno 600. §.* Fürters/ *&* §. Es ſein auch/ ꝛc. Alias, conſuetudine dictitante, cadavera damnatorum cum licentia Principis ſepelienda eſſe, ea ſic intelligi debet, niſi ſint cauſæ nefandorum criminum, nempe ut conſpectu deterreantur alii, ab eiſdem facinoribus, &c. *d. l. 28. §. 15. ff. de pœn.* Cumprimis verò cadavera concedenda ſunt medicis & anathomicis ſupplicatione interpoſitâ requirentibus eadem, conſtat tamen Carolum V. de anno 1550. idcircò rogatum, non niſi ex reſponſo Univerſitatis Salmatienſis, an hæc liceret concedere nec ne? demum cadavera conceſſiſſe medicis, ut refert *Iul. Clar. d. lib. 5. q. finali n. 2.* Atque hæc ſunt, quæ in hac parte quarta tractare volui, ſi profuerim, ſi fecerim nonnihil, quod ad communem Reipublicæ utilitatem & uſum redundare queat, Deo Opt. Max. à quo dona omnia procedunt, id unice acceptum feram, ſin non omnia & ſingula ad palatum & ſatietatem lectoris præſtant, cogitet candidus quivis neminem mortalium unquam extitiſſe tam felicem, ut placeret vel ſatisfaceret omnibus. Sufficiat mihi, digitis ſaltem ſupremis attigiſſe ea, quæ ſubjecta materia requirebat. Tu fac Mome meliora & diſcam ſi viderim meliora.

Invideat qui non vidit.
Invideat qui vidit & non pervidit.
Nec Momum metuo nec Mimum.

ait *Leonclav. l. in hiſtor. Muſell. in fine.* Abrumpere hic teneor filium publicis, quorum antea liber eram, modo diſtractus negotiis. Interea boni conſule & fave lector Candide, vivo, & parce mortuo, non me arrogantia cœca ad hoſce exantlandos labores, ſed ſola Dei vocatio, cui non parere peccatum foret, inſtigavit. Vale & dextrè utere hoc libello. Deo ſit Laus & Gloria in ſecula ſeculorum,

AMEN.

FINIS.

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